90-774

NO.

Supreme Court, U.S.
FILED
NOV 13
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAN M. LINKOUS,

Petitioner

versus

THOMAS J. STOVALL, ET. AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Dan M. Linkous
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QUESTIONS PRESENTED

1. Where no exception provided by Rule 11, F.R.A.P., to limit or delay the transmittal of the record from U. S. District Court to Circuit Court of Appeals is applicable, is an unwillingly pro se appellant in a highly complex and controversial case which has been vigorously pursued entitled to extension of time or to a revised briefing schedule where brief was improperly scheduled to be filed prior to completion of the designated transcript, and the docket sheet and numbered trial court documents which never were transmitted to the Court of Appeals, nor complete and available in the U. S. District Court Clerk's office for use in preparation of the appellant's appendix and brief?

2. Is denial of an appellant's first request for extension of time to file appellant's brief reasonable and just, when U. S. District Court proceedings concerning pre-appeal and post-appeal matters are ongoing and preclude adequate access to complete transcript documents, whose decisions may affect appellant's brief content, and where no Circuit Court of Appeals or U. S. District Court "Order" or "Agreement" of parties exists to allow none of the transcript to be

sequentially numbered and transmitted to the Circuit Court of Appeals for judicial and appellant access?

3. Where appellant is willing to pay for and arrange transmission of the appeal transcript from the Circuit Court of Appeals after transfer from the U. S. District Court, is it justifiable and appropriate to deny appellant the right to access to the sequentially numbered transcript documents for full and complete preparation of appellant's appendix and brief over the opposition of one of the defendants whose reasoning was intended solely to obstruct appellant's ability to file brief and appendix and therefore obstruct appellant's right to appellant review of his case issues?

4. In a case that spans 5 years, nearly 60 depositions, thousands of hours of work effort, hundreds of thousands of dollars expended on discovery and trial preparation, and has significant albeit controversial issues addressed allowed to be more readily dismissed on procedural or technical nuances to preclude the memorializing of the events in appellant's brief to forestall adjudication of sensitive and controversial issues and obstruct the appeal process so as

to deny appellant his constitutional right to access to the courts, equal application and protection, impartial tribunal, and substantive due process?

5. Does our judicial process allow the Fifth Circuit Court of Appeals' judges from Texas powerful law firms whose past associates represent appellees in appellant's case influence the survival of appellant's appeal through the numerous technical and procedural methods to foreclose appellant's right to brief his case and have it adjudicated on its merit as opposed to being high-handedly and more rigidly treated so that it can be dismissed regardless of its complex, controversial, and potentially meritoriously significant issues?

LIST OF ALL PARTIES

Daniel Michael Linkous
Plaintiff, Appellant, Petitioner

James M. Murphy
Previous counsel for Danny Michael Linkous—Petitioner

Dean Huckabee—Judge
Defendant, Appellee, Respondent

Arthur Lesher—Judge
Defendant, Appellee, Respondent

Thomas J. Stovall—Judge
Defendant, Appellee, Respondent

Donn C. Fullenweider—Ex-wife's attorney
Defendant, Appellee, Respondent

Donald Peter Fogo—Attorney ad litem
Defendant, Appellee, Respondent

Muriel Flake—Psychologist
Defendant, Appellee, Respondent

Nancy L. Linkous—Petitioner's ex-wife
Defendant, Appellee, Respondent

Thomas Henderson—Bankruptcy attorney
Defendant, Appellee, Respondent

Charles Long—Bankruptcy Attorney
For Peter Johnson—Trustee
Petitioner Chapter 7 (Non-direct party)

Jerry Smith—Judge
Fifth Circuit Court of Appeals Judge
Requested disqualification by Petitioner

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DAN M. LINKOUS,

Petitioner

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THOMAS J. STOVALL, ET. AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Dan M. Linkous, pro se, respectfully requests that a Writ of Certiorari issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled cause on July 9, 1990.

OPINIONS BELOW

Petitioner filed June 28, 1985, his "original complaint" and subsequently amendments to such were made by Petitioner. On October 16, 1987, the presiding U.S. District judge dismissed claims against some of the defendants and disallowed the 1983 civil rights claims (App. G), but allowed Petitioner to pursue by amended pleading R.I.C.O. allegations against the remaining defendants.

Further amendments to Petitioner's complaint were made as discovery was allowed and several rulings by the presiding U.S. District judge and the magistrate assigned to oversee discovery were made. Prior to complete discovery, this case was set for jury trial, July 11, 1989, only to be precipitously canceled July 14, 1989, and subsequently July 19, 1989, the case was dismissed by "final judgment" (App. E) and "memorandum and order" (App. F).

Petitioner filed August 1, 1989, his "notice of appeal" (App. H) and timely and appropriately perfected such appeal to the Fifth Circuit Court of Appeals. Matters pre- and post-"notice of appeal" were carried on by the U. S. District Court and the complete transcript on appeal with

sequentially numbered pages was not transmitted to Fifth Circuit Court of Appeals per F.R.A.P. 11. Other occurrences precluded the completion of the transcript, accurate completion of all statement of facts, and transcript was not sequentially numbered, nor any of it transmitted to the Fifth Circuit Court of Appeals. The case file was apparently retained in the U. S. District Court Clerk's and presiding judge's possession and made relatively inaccessible to Petitioner. Defendants submitted to the Fifth Circuit Court of Appeals "request for dismissal of Petitioner's appeal" due to lack of jurisdiction and sanctions against Petitioner which resulted in a Fifth Circuit Court of Appeals order of October 24, 1989 (App. D) denying sanctions and dismissal and accepting jurisdiction of case on appeal by appellant.

Petitioner received his briefing schedule (App. K) April 26, 1990 from the Fifth Circuit case manager some two weeks after it was allegedly sent, on April 13, 1990. Petitioner promptly filed his "request of the U.S. District Clerk to transmit the record to the Fifth Circuit" (App.*L*) according to F.R.A.P. 10, 11, 12, 27, 30, 31, 42, and 45 and Fifth Circuit Local Rules 10, 11, 27, 30, 31, 42, and 45 and also

filed with the Fifth Circuit Court "appellant's extension of time to file brief" on May 11, 1990 (App. AC) with good cause reasons indicated for such relief.

On June 5, 1990, single panel member Judge Jerry Smith denied appellant's request for extension of time and transmission of file from district to circuit court" (App. A). Petitioner filed June 18, 1990, his "request for rehearing by three-judge panel to reconsider denial of extension, reinstate appeal, grant extension to file appellant's brief, and transfer case file to Fifth Circuit" per F.R.A.P. and Fifth Circuit Local Rules (App. O). On July 5, 1990, the three-member panel of judges Williams, Smith, and Higginbotham denied Petitioner's reconsideration (App. B).

On July 9, 1990, the Fifth Circuit Court of Appeals dismissed Petitioner's appeal for want of prosecution secondary to failure to file brief (App. C). On September 23, 1990, Petitioner filed his "motion to extend time to file petition for Writ of Certiorari" with the United States Supreme Court which, after presentation to Honorable Justice White on October 10, 1990, was granted an extension of time to file "Petition for Writ of Certiorari" until November

13, 1990. The 90th day after dismissal of Petitioner's case by the Fifth Circuit Court of Appeals, exclusive of holidays or weekends, was October 8, 1990. Copy of said order of extension is enclosed as App. I.

JURISDICTION

Petitioner's "original complaint" bringing civil rights suit damages and requesting injunctive and declaratory relief is pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201 and 2202; also sought was declaratory relief that § 11.11 of the Texas Family Code is facially unconstitutional as applied to him and his family. The jurisdiction of the U.S.D.C. was invoked under 28 U.S.C. § 1331 and 1343(3)(4) since this arises under the constitution and laws of the United States. After amendment of Petitioner's complaint, jurisdiction is further invoked for injunctive relief and damages purusant to 18 U.S.C. §§ 1961, 1962, 1964, 1965, and 1966 (R.I.C.O.). The jurisdiction of the Fifth Circuit Court of Appeals is pursuant to 28 U.S.C. § 1291. The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTION, STATUTES, RULES, AND TREATIES INVOLVED

CONSTITUTION OF THE UNITED STATES

PREAMBLE: We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity do ordain and establish this constitution for the United States of America.

U.S. CONSTITUTION ARTICLE 3:

§ 1: The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of supreme and inferior courts, shall hold their offices during good behavior, ...

§ 2: The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority . . . the controversies to which the United States shall be a party; the controversies between two or more states; between a state and citizens of another state; between citizens of different states; . . . .

U.S. CONSTITUTION ARTICLE 4:

§ 1: Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof.

§ 2: The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

§ 4: The United States shall guarantee to every state (inferentially its citizens individually and collectively) in this union a republican form of government . . . .

CONSTITUTION OF THE UNITED STATES

AMENDMENT 1: Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble and to petition the government for a redress of grievances.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 5: No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of the grand jury excepting cases aris-

ing in the land or naval forces or in the militia when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 7: In suits at common law where value and controversy shall exceed $20, the right of trial by jury shall be preserved, ...

CONSTITUTION OF THE UNITED STATES

AMENDMENT 8: Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishments inflicted.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14: No state shall make or enforce any law which shall abridge the privilege of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law nor deny

to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. §§ 1961 - 1965 (Civil R.I.C.O.): The district courts of the United States shall have jurisdiction to prevent and restrain violations of § 1962 . . . any civil action or proceeding under this chapter may be instituted in a district court of the United States. . . .

18 U.S.C. §§ 1961 - 1966 (R.I.C.O.): Title 10 of the Organized Crime Control Act of 1970 permits private parties injured by reason of certain criminal acts with a cause of action for treble damages and court costs and attorney fees (§ 1964(c)), to File suiT to Redress such.

28 U.S.C. § 453: Oaths of justices and judges. Each justice or judge of the U.S. shall take the following oath of affirmation before performing the duties of his office, "I, _____, do solemnly swear that I will administrate justice without respect to persons and do equal right to the poor and to the rich and that I will faithfully and impartially discharge all the duties incumbent upon me as _____, according to the best of my abilities and understanding,

agreeably to the Constitution and the laws of the United States. So help me God."

28 U.S.C. § 455: Requirements and procedures in suggesting disqualification of a federal judge specifically (a), (b)(5)(iii), and (c).

28 U.S.C. § 1331: Federal question. The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.

28 U.S.C. § 1343: Civil Rights and Elective Franchise provides in pertinent part; the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person (4) to recover damages or secure equitable or other relief under any act of congress providing for the protection of civil rights, including the right to vote.

42 U.S.C. § 1983:

CIVIL ACTION FOR DEPRIVATION OF RIGHTS. Every person who under cover of any statute or ordinance, regulation, custom, or usage of any state or territory or the District of Colombia subjects or causes to be subjected any citizen of

the United States or other person within the jurisdiction thereof to the deprivation or any rights, privileges, or immunities secured by the constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any act of congress applicable exclusively to the District of Colombia shall be considered to be a statute of the District of Colombia.

F.R.A.P. 10(a): The original papers and exhibits filed in the district court, transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

F.R.A.P. 10(b): . . . appellant shall order from the reporter a transcript of the proceedings . . . . appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. . . . appellant must make satisfactory arrangement with the reporter for the cost of the transcript.

F.R.A.P. 11(a): . . . appellant shall take any other action necessary to enable the clerk to assemble and transmit the record.

F.R.A.P. 11(b): If the transcript cannot be completed within 30 days of receipt of the order, the reporter shall request an extension of time from the clerk of the court of appeals . . . failure of the reporter to file the transcript within the time allowed, the clerk of the court of appeals shall notify the district judge and take such other steps . . . upon completion of the transcript . . . file it with the clerk of the district clerk and notify the clerk of the court of appeals . . . . When the record is complete for purposes of appeal, the clerk of the district court shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness.

F.R.A.P. 11(c) . . . the parties may stipulate or the district court on motion of any party may order, that the clerk of the district court shall temporarily retain the record for use

by the parties in preparing appellant papers. In that event, the clerk of the district court shall certify to the clerk of the court of appeals that record, including transcript, is complete for purposes of appeal. . . . as parties may agree or the court may order, the appellant shall request the clerk of the district court to transmit the record.

F.R.A.P. 11(e): The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted. If the record or any part thereof is required in the district court for use there pending the appeal, the district court may make an order to that effect . . . subject to the request of the court of appeals and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

F.R.A.P. 11(f): Parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court . . . .

F.R.A.P. 12(A): October 11, 1982, FIFTH CIRCUIT JUDICIAL COUNSEL COURT REPORTER MANAGEMENT PLAN, SUPPLEMENT TO COURT REPORTER ACT

Upon receipt of copy of notice of appeal . . . clerk of court of appeals shall enter the appeal as soon as possible upon the docket.

F.R.A.P. 12(b): Upon receipt of the record transmitted pursuant to rule 11(b) . . . the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

F.R.A.P. 27(c): . . . a single judge of a court of appeals may entertain and may grant or deny any requests for relief . . . except that a single judge may not dismiss or otherwise determine an appeal . . .

F.R.A.P. RULE 30(f): A court of appeals may by rule applicable to all cases . . . dispense with the requirement of an appendix and permit appeals to be heard on the origi-

nal record with such copies of the record or relevant parts thereof as the court may require.

F.R.A.P. RULE 31(c): If an appellant fails to file a brief within the time provided by this rule or within this time as extended . . . dismissal of the appeal.

LOCAL RULE 10.1: Appellant's order for the transcript of the proceedings . . . shall be on a form.

LOCAL RULE 10.2: The record on appeal shall be bound in a manner which will facilitate reading with pages numbered consecutively by the clerk of the district court.

LOCAL RULE 11.1: The court reporter shall in all cases . . . acknowledge receipt of order . . . date of receipt of order . . . financial arrangements . . . number of days involved in the transcript, an estimate of number of pages . . . estimated date on which the transcript will be completed . . . a certificate that he or she expects to file the transcript with the district court within estimated time. . . . enlargement of the time for filing a transcript beyond the 30-day period fixed by F.R.A.P. 11(b) shall be filed with the clerk and shall specify in detail amount of work accomplished . . . list of outstanding transcripts for other courts due . . . verifica-

tion that this has been brought to the attention and approved by the district judge who tried the case.

LOCAL RULE 11.2: It is the responsibility of the clerk of the district court to determine when the record on appeal is complete for purposes of the appeal unless . . . within 15 days from the filing of the notice of appeal . . . the clerk of the district court shall advise the clerk of this court of the reasons for delay and request an enlarged date for the filing thereof.

LOCAL RULE 27.1: The clerk is authorized . . . to enlarge the time for filing designations as to printing under F.R.A.P. 30 and for filing briefs, answers, objections, or replies . . .

LOCAL RULE 27.2: . . . any single judge . . . in his discretion and subject to review by court . . . to enlarge for good cause shown the times prescribed by F.R.A.P. or rules of this court supplementing those rules except for the power . . . for initiating an appeal.

LOCAL RULE 42.3: THE DISMISSAL FOR FAILURE TO PROSECUTE. The clerk shall issue a notice to appellant that upon the expiration of 15 days from the date thereof the

appeal may be dismissed for want of prosecution unless prior to that date, the default is remedied. If a default is remedied within that time, the clerk shall not dismiss the appeal. If the default is not remedied within that time, the clerk may enter an order dismissing the appeal for want of prosecution.

LOCAL RULE 45.2: RELEASE OF ORIGINAL PAPERS. The clerk may release original records or paper without a court order for a limited time for purposes of printing or upon request of a party or his counsel to facilitate preparation of a brief in a pending appeal.

9 MOORE'S FEDERAL PRACTICE: The steps in the assembly, transmission, and filing of the record are governed by Rules 10, 11, and 12. When an appeal is taken from a final judgment that disposes of the entire action below, the record is no longer needed in the district court and there is no inconvenience attendant upon its transmission as the record on appeal. Rule 11 as amended in 1979, imposes no duty on the appellant to see that the record is transmitted within fixed time and eliminates all motions for extension of time for transmission. The transmission

of the record under the amended rule is the clerk's rule and dereliction in prompt transmission purely a matter of judicial administration. The want of published decisions on the subject suggests that extensions of time requested before the time has run are granted with a much more generous hand; and occasional observations in the decisions verified as suggestion. F.N.11:see (e)(g) Business Forms Finishing Service, Inc. v. Carson, 463 F.2d. 966 (7th Circ. 1971) in which the appeal was dismissed for failure to file a brief within the eleventh extension of time, perhaps an unusual example of tolerance.

ABA MODEL RULES OF PROFESSIONAL CONDUCT:

RULE 8.4 MISCONDUCT. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY:

DISCIPLINARY RULE 1-102 MISCONDUCT. A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

ABA MODEL STANDARDS RELATING TO JUDICIAL DISCIPLINE: § 3.3 GROUNDS. Grounds for discipline shall

include any conduct that constitutes the codes of judicial conduct or professional responsibility.

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

RULE 8.4 MISCONDUCT. A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

STATEMENT OF THE CASE

Defendant Nancy Linkous filed divorce against Petitioner April 3, 1983, but temporary orders were not consummated until August 3, 1983; amicable settlement was precluded by power-broker influence-peddler divorce attorney Defendant Fullenweider, whose contingent fee contract with misrepresentation of Petitioner's estate by $8 million net worth and his personal agenda to "send a signal to the community and make an example of Petitioner" to display the corrupt power of the divorce industry in Harris County, Texas, has over its constituents in violation of its state and United States constitutional rights and protections. Egomaniac Defendant Fullenweider owned and controlled the family law judges and he and his "then" partner "Racehorse Haynes" controlled most of the judiciary and attorneys in the state of Texas. Fullenweider protracted the

proceedings by appointing "Fee churner court appointees" and maliciously filed frivolous contempts against Petitioner in excess of 40 times and encouraged his client Defendant Nancy Linkous to deny access of Petitioner to his children on regular basis. Because Petitioner refused multimillion dollar settlement with Attorney Fullenweider and his client and outrageous support and alimony, Petitioner was deprived of his assets to pay monthly debts and was forced into Chapter 11 Bankruptcy on advice of his attorney, July 2, 1984, after multiple lawsuits and threats of foreclosure, additional lawsuits, etc., were impending. Several state divorce judges were removed or voluntarily recused themselves because of improprieties surrounding this case of high profile in newspapers and on t.v. Defendant Fullenweider engaged the services of Tom Henderson and bankruptcy power- (with Chamberlin, Hrdlicka Tax Attns.) broker law firm Sheinfeld, Maley, and Kay to assist in the abuse of process of the bankruptcy proceedings so as to "get what he wanted." In association with court appointed psychologist Defendant Muriel Flake and ad litem attorney Don Fogo and Defendant Judge Dean Huckabee, sponsored

by Defendant Fullenweider who made known to everyone in Texas his power-control over individual family's destiny and his ability to destroy them at will because of judiciary from "top to bottom" that were "bought and paid for" who allowed injustice and disclaimed the right of an individual to his state and United States constitutional fundamental rights and liberties, FOR REELECTION OR RIGHT price.

Petitioner was wrongfully imprisoned on five occasions with a Harris County and a Dallas County court of appeals affirming such on two occasions and a third progressing to the U.S. Supreme Court who deferred action on any "divorce matters" at that time of the consideration of the "Feiock" case. Petitioner was a medical director of a hospital and a community leader; his practice of medicine was nearly destroyed, he was sued for debts numerous times without 11 U.S.C. § 362 leave of bankruptcy court stay, had letters from attorneys and judges written to his hospital and medical boards to harass him, had his house and office broken into on several occasions, had his wife assaulted on occasions by Defendant Nancy Linkous and her assistants, regularly had his phone tapped in conversations

with his children and on other occasions by influential attorney Fullenweider, had his mail routinely misdirected to his ex-wife and other mail directly taken from his box, and generally was terrorized and brutalized by the tyranny and despotic legal and judicial system in Harris County, Texas. Petitioner was forced into Chapter 7 Bankruptcy after inability to restrain the abusive process of Defendants Fullenweider, Linkous, Henderson, et al, and Appointed Trustee Peter Johnson with his attorney, Charles Long, who were "bosom buddies" of the defendants, conspired with them to protract this simple bankruptcy such that Petitioner was discharged in late 1988 and the bankruptcy is still proceeding some six years later. The bankruptcy court allowed proceedings to go forth in family law court, much of which was frivolous, unsubstantiated, and misrepresented charges of contempt, and ultimately allowed the divorce trial to go forth, considering not only custody and child support, but disbursement of separate and community property in violation of the Texas Divorce and Property Laws and the U.S. Bankruptcy Code and case law and supremacy clause.

Two weeks into the divorce jury trial, Petitioner's attorney became gravely ill, and no continuance was granted Petitioner and he was forced to precede pro se for the next four weeks of jury trial against power-broker Defendant Fullenweider. The divorce trial was stopped by the presiding judge and $17,500 a month in child support, $5 million in judgments, and all of the assets, both separate and community were granted to Defendant Nancy Linkous. Also, an illegal "trial within a trial" concerning a $500,000 asset of the bankruptcy court, which the bankruptcy had already taken hegemony over and was in process of liquidating was taken possession of at state court conspirators direction and encumbered such that nearly $150,000 of attorney administrative fees were necessary in TRO and civil contempt and sanctions against Defendants to have U.S.D.C. Judge Lynn Hughes remove Defendant Nancy Linkous from such asset and have it liquidated for the benefit of the bankruptcy estate and real creditors. Bankruptcy trustee and his attorney became implicated in the racketeering conspiracy by dismissing the actions against the defendants and rewarding them with indemnification of their

civil and criminal activities and giving them nearly $250,000 in assets, of which $50,000 was in cash. Sale of bankruptcy estate and Petitioner property across state lines and use of banks to cash bonds and write checks to pay in and out-of-state defendants occurred. This was all to the detriment of the real creditors and debtor of the estate.

During this period of time, the divorce judge, under Family Code § 11.11, took Petitioner's access to his children from him after he defeated a 26-count contempt in court. Petitioner had no contact with his children for over 8 months and was instructed by the bankruptcy court to use any court at his means to redress these ills and gain meaningful relationship again with his children. Petitioner filed his "original complaint" which was a 1983 civil rights suit in hopes of gaining access to his children, which was never addressed but put on the "back burner" for over three years by Chief U.S.D.C. Judge James DeAnda. Petitioner represented by bankruptcy and divorce counsel at that time attempted to appeal his divorce decree labeled as "ridiculous" by members of the court of appeals panel, but

two of the three court reporters refused to provide the statement of facts and his cost bond was increased to $125,000 while he was still in bankruptcy and had no ability to obtain bond or place assets in lieu of bond. The court of appeals dismissed his right to appeal and this maliciously instituted increased cost bond was taken to the U.S. Supreme Court by Petitioner's then attorney and leave to hear such matter was dismissed at each level. Petitioner contends this is "standard operating procedure" in his case to not allow him an opportunity to have his case heard on its merits before a judge or a jury but to have all of his cases illegally and unjustly dismissed or denied any relief such as leave, extensions, etc., which are otherwise routine and standard in other cases especially those represented by counsel.

Petitioner persisted in his belief in the heritage of the constitution of the United States and his undying belief in some conscionability of some judges in this country to not be "bought and paid for" and to be part of the "closed shop mentality" protecting other attorneys and judges but would have concern for individual basic fundamental liberties and

rights. Petitioner spent much time and money with attorneys to redress these ills and as he ran out of money from the intentionally protracted and increasing number of lawsuits, he had to pursue them pro se or else "give up." He has been discriminated against at all levels for representing himself because of the desire to maintain the business and commerce cartel of attorneys in litigation backed by the judges who were sponsored for their positions by those same attorneys. Petitioner appealed bankruptcy decisions to U. S. District Court and appeal files were blatantly tampered with, appeals dismissed without due consideration, and sanctions imposed upon Petitioner if he persisted in exposing the injustice of our legal and judicial system in his case. He was falsely arrested for alleged misdemeanor assault in attempting to protect his family from being beaten by three youths on two occasions, which after 18 appearances at criminal court and a 5-day jury trial, he was found innocent and all stated the case was frivolous and harassing to Petitioner. Petitioner has had the IRS perjure an affidavit and falsify information to have U.S.D.C. magistrates approve the legal seizure of all his assets, including

his medical charts and legal documents, which required Petitioner and two U.S.D.C. court proceedings under Judge Lynn Hughes, to grant injunction against them and document their admission of no taxes owed by Petitioner and eventually returned his property after 30 days. The IRS kept nearly $100,000 of various assets and Petitioner was out of medical practice for 30 days. This harmed his and his family's reputation significantly and further accomplished what the conspiracy of racketeers wanted. Petitioner persisted in proceeding with his now converted civil rights suit into a R.I.C.O. lawsuit after the 1983 civil rights suit and several defendants were severed out by U.S.D.C. presiding judge James DeAnda.

Petitioner's attorney throughout this lawsuit was constantly frustrated at the inability to carry out discovery and both U.S.D.C. presiding judge and his magistrate overseeing discovery sided blatantly with the defendants and their power-broking law firms who had members sitting on the Fifth Circuit Court of Appeals and others had "direct ties" with the other members of the Fifth Circuit Court of Appeals. Discovery was not allowed for some time in this

case and when hearings were held to set up guidelines for such they became canceled on many occasions. After discovery commenced and depositions were taken, numerous individuals refused to appear after being appropriately subpoenaed and the court refused to compel their appearance or sanction them. The U.S.D.C. in Southern District of Texas, Houston Division openly made mockery of our judicial process "to send a signal to the community and make an example of Petitioner." The more blatant the evidence elicited, of racketeering activities of the defendants, the more harsh the court became to limit discovery and to preclude due process, equal application and protection, impartial tribunal, access to the courts, and adherence to federal rules of civil procedure and evidence and adhere to prevailing case law concerning the pretrial matters in this case. During the last depositions allowed in this case, power-broker law firm Fulbright and Jaworski in writing misrepresented that the presiding judge quashed those depositions by illegal exparte conference with some defendants counsel and the presiding judge without plaintiff or his attorney notified or being present, but later presiding

judge admitted this illegal exparte conference occurred but denied he ever "entered" such order although promised verbally to do so. This incrimination of both defendants' power-broker law firms and the presiding judge in this case only brought laughter to the courtroom as they "covered up for each other." This case was scheduled for trial on July 11, 1990, but was canceled, and on July 19, 1990 dismissed after 5 years and thousands of hours of effort, and nearly 60 depositions taken, hundreds of thousands of dollars expended by Petitioner, and unestimatible time away from Petitioner's family and medical practice by petitioner to "seek justice" in this matter. FBI investigations into mail fraud, wire-tapping, theft of resources by private investigator impersonators, and criminal civil rights violations came to a halt. State law suits addressing Petitioner's inability to have any contact with his children for nearly 3 years now and redress slander, false imprisonment, assault, and other crimes perpetrated upon him by power-broking Defendant Fullenweider and his "assistants" came to a standstill. Petitioner's attorney became very depressed and frustrated, stated that he feared for his ability to practice

law in the future in Texas if he persisted in representing Petitioner in his cases as he would not be able to represent any of his future clients without judicial bias and uncooperation of opposing counsel, much less his fear of retaliation by the state bar grievance committee. Petitioner's attorney "disappeared" after the July 19, 1990, dismissal of Petitioner's law suit and took all of the records with him and refused to return those records or even communicate with Petitioner since that time. Petitioner had to, through state bar and court proceedings, obtain those documents which were returned disheveled and incomplete.

Petitioner filed his "notice of appeal" to the Fifth Circuit Court of Appeals and requested with prepayment, the transcription of the statement of facts of the hearings and asked that the federal rules of appellate procedure be followed to transmit the "record" to the Fifth Circuit Court of Appeals which was not done and has not been done to date. The U.S.D.C. presiding judge retained the "case file" in his and the U.S.D.C. clerk's possession, allegedly to finish pre-appeal matters but post appeal motion and matters were considered for several months after the appeal was perfect-

ed and no order from the U. S. District Court or the Fifth Circuit Court of Appeals or agreement of the parties was executed to allow the U. S. District Court to never make the file complete, sequentially number the file, and transmit such record to the Fifth Circuit Court of Appeals after its completion to start Petitioner's brief scheduling timetable.

Petitioner was sent a briefing schedule which allowed him 40 days to submit his appellant's brief, but matters were still ongoing in the U. S. District Court taken up after the appeal was filed and inaccessibility to that file by Petitioner was justified by the U.S. District clerk's office that the file was in judge's or law clerk's chambers. Petitioner could not prepare adequately an appendix or fully and completely prepare to submit his appellant's brief because of this and his request to transmit the record and for the U. S. District Court to show authority fell on deaf ears. Defendants filed motions to dismiss the appeal and requested sanctions at the Fifth Circuit Court of Appeals level and were denied these reliefs, with the Fifth Circuit Court of Appeals stating it had jurisdiction over these mat-

ters now and that the filing for sanctions by defendants against Petitioner was untimely relative to the final judgment. Nevertheless, the U. S. District Court continued to rule on motions and in diametric opposition to the Fifth Circuit Court of Appeals, approved the sanctions requested by the defendants in an order some months after the notice of appeal and jurisdiction of the Fifth Circuit Court of Appeals was assumed.

Petitioner submitted a request for extension of time to file appellant's brief, or in alternative, setting aside the briefing schedule prematurely sent to Petitioner until the federal rules of appellate procedure were complied with and the complete record was sequentially numbered and transmitted to the Fifth Circuit Court of Appeals so that Petitioner could either go to the Fifth Circuit Court and review the documents or request the documents be sent to him at his cost and responsibility. This extension of time request went to Fifth Circuit Court of Appeals Judge Jerry Smith, who as a single judge, denied the extension of time even in light of the numerous good causes to extend and denied Petitioner's request for U. S. District Court to trans-

mit the record to the Fifth Circuit Court despite the Federal Rules of Appellate Procedure, Fifth Circuit Court of Appeals Local Rules, and the writings of 9 Moore's Federal Practice and Wright and Miller Federal and Civil Procedure, along with prevailing case law and statements by the Fifth Circuit Court deputy clerk and case manager that "first time" extensions in a complex, voluminous case such as this especially by a pro se litigant abandoned by his attorney without access to records, who only recently got the complete transcription of statement of facts even after having paid for them months prior, was extremely reasonable and they couldn't understand why it was not granted. Judge Jerry Smith was the attorney for the City of Houston in 1985 when Petitioner's patient, Mr. Bouchard's family filed a suit against the City of Houston for wrongful death which Petitioner gave medical testimony regarding and whom Judge Jerry Smith was the main counsel in opposition to Petitioner Linkous' patient's family and their attorneys. This was a huge law suit which continues to this day. Petitioner contends that Judge Jerry Smith had then and continues to this day interest in conflict which should

have precluded him from participating in, much less rendering a controversial decision terminating this long-standing case on appeal. Judge Jerry Smith was an attorney with Fulbright and Jaworski prior to his being "sponsored" for city attorney, prior to his appointment to the Fifth Circuit Court of Appeals, and Fulbright and Jaworski just happens to be representing one of the main defendants in this case and also has one of the most influential Fifth Circuit Court of Appeals judges, Carroll Randall King sitting at the Fifth Circuit, which Petitioner feels prejudiced his case for extension of time to file appellant's brief.

During this time, Petitioner has for over 3-1/2 years been denied access or contact with his children, has been brutalized by the state district court in some of his litigations, and has his bankruptcy continuing to his detriment, along with the legal and judicial communities' attempts to deprive him of the right of commerce by restraining trade and precluding his ability to earn a living and support his new wife and two children, and carry on his litigation to redress the most heinous ills that have been perpetrated upon him and his family in the past by these power-bro-

kers and influence-peddlers of the legal and judicial system who are only concerned with the big business, commerce interests of the legal and judicial cartel and have no concern for judicial propriety, rules, or procedure for prevailing case law or anyone's United State's constitutional fundamental rights and liberties. On Petitioner's filing reconsideration for extension of time elaborating in more detail on the "good cause" the three-member panel denied reconsideration for extension of time to file appellant's brief and after such decision his appeal was dismissed for want of prosecution for failure to file appellant's brief. Petitioner has filed a request for extension of time to file his petition for Writ of Certiorari to the Fifth Circuit Court of Appeals with the U.S. Supreme Court Justice White, and this was granted until November 13, 1990. Petitioner now files his Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals on this November 13, 1990, and hopes that the U.S. Supreme Court or its Fifth Circuit Court associate Justice Scalia, at this time will not disallow Petitioner his right to be treated fairly and have his issues briefed and heard regardless of the ultimate decision of the body that

reviews his brief concerning this case. Petitioner only wishes his constitutionally guaranteed and perceived rules, statutes, and case law rights to have an extension granted so that he could file his appellant's brief to memorialize the facts that have occurred in this case regardless of what decision comes from Fifth Circuit Court of Appeals or the U.S. Supreme Court. Petitioner contends that the citizens of this country have become more than cynical and embittered to the legal and judicial "industry" and are completely "fed up" with the "gamesmanship" that is required for an individual to seek redress of injustice committed upon him, his family, his liberties, or his property. Petitioner is aware of the discrimination held by attorneys against pro se litigants and their desire for all individuals to hire attorneys and pay money on both sides of the issue to keep the commerce and business industry and cartel of the legal and judicial system "at full speed." Petitioner contends this is in blatant contradistinction to the inherent wishes of the framers of the constitution and of the heritage of our early founding fathers in spirit and in intent. Petitioner does not delude himself that there is absence of integrity, moral

fiber, conscionability and concern for the average citizen's rights from abuse by the more powerful authority figures granted the responsibility and obligation along with the privilege to possess and exert such power such as our highest of judicial triers and interpreters of law. They so influence each individual's life besides the masses of individuals in their decision making process.

Petitioner has been told by numerous attorneys and judges in Harris County and in Texas generally that he or his family and friends cannot get justice in Texas or the United States because he is "taking on of the system" by wanting to be treated fairly, justly and even-handedly. Petitioner hopes that the United States Supreme Court is not complicitous in the behavior of the Fifth Circuit Court of Appeals, U. S. District Courts of Texas and the state and local courts of Texas in general wherein "might makes right" and those who don't "pay" or have "contacts" and exert influence and power, get no justice and get no access to the courts for consideration. The Supreme Court of the United States is the only bastion standing between the corrupt courts from top to bottom and the totally frustrated

and embittered public which feels as if they are governed by terror and tyranny of a totalitarian and despotic government wherein judges don't impartially try and interpret the law but have become public opinion reflectors, policy and legislative makers, and essentially "prostitutes" for the "pimp" rich and powerful of our country. Petitioner contends that for him to be given an opportunity to adequately and fully brief accurately his U. S. District Court Case for Fifth Circuit Court of Appeals review is reasonable and just and certainly should not be intimidating or threatening to the power broking, influence peddling law firms on the opposing side representing or colluding with the defendant racketeers and their "assistants" involved in this blatant and high profile disregard to an individual's constitutional rights of access to the courts with due process and equal application. Certainly Fulbright and Jaworski, Andrews and Kurth, Haynes and Fullenweider, Sheinfeld Maley and Kay, Floyd Taylor and Riley, Hirsch Glover Robinson Shiness, Wood Lucksinger, Vincent and Elkins, Butler and Binyon, and the Attorney General of Texas shouldn't be afraid to allow average citizen Petitioner

Linkous to file his appellants brief should they? Although the Supreme Court has their personal agenda to rule on only approximately 160 cases a year to "make policy" in areas of their concern, the average citizens feel they deserve consideration in their cases wherein it involves only them or a class they belong to where this "class discriminatory invidiously personal animus" is applied to them regularly in our courts most blatantly and wrongfully, and the U.S. Supreme Court is our only last hope of salvation from complete disillusionment, frustration, cynicism, and eventual anarchy of the populace.

To date, the U. S. District Court has not completed the record nor has it sequentially numbered it nor has it transmitted it to the Fifth Circuit Court of Appeals. No order from the U. S. District Court nor the Fifth Circuit Court of Appeals nor agreement of the parties exists warranting the retention of all of the documents in the U.S. District judge and clerk's possession. The reasonableness of a first time extension request of Petitioner in his particular circumstances is unequivocally reasonable and just. The fact that the wide latitude of discretion of judges allows them

to essentially "do whatever they want" regardless of its propriety, morality or legality, is not questioned by Petitioner. If indeed, the bill of rights and the constitution of the United States is "dead" by most average citizen's perceptions, then possibly we should alter it or dismantle it so as to not labor under the misconception that it exists as our protector between the government and our individual rights. Petitioner is well aware of and has been informed by numerous attorneys and judges of the "favor-trading system" and the "good-old-boy-get-along-gang" system wherein "markers" are passed out and called in in the legal and judicial system with regularity. The doctrine of near absolute immunity to all judges has allowed them to become tyrants and terrorists and abrogators of the most cherished heritage of this country given to us by our forefathers. No rationalization or personal agenda reconciliation can justify this behavior. Our legislators have no credibility, the IRS is the KGB of the United States without oversight and is out of control, and now our judiciary has taken the position that if one is not represented by an expensive, powerful law firm and pays his dues whether he can afford it or not,

he will not receive j[illegible] by the "wide latitude of discretion" given the judges for purposes originally to protect the citizenry which has now been abused to protect the business industry and commerce cartel of the legal and judicial community. Although Petitioner received standing ovations at his talks and on his radio, t.v., and newspaper appearances by the average citizens, he is ostracized and condemned by the legal and judicial community by wanting to hold them to the degree and standard of integrity, morality, conscionability and fairness that every profession and occupation should observe in this country and every citizen should speak out for to preserve democracy. Petitioner contends our rights are only as protected and effective as our vigilance in monitoring and exercising them and that democracy should through its system of separation of powers – checks and balances create dissension among the government versus the governed and the judicial tryers and interpreters of law and those who refuse to obey such responsibilities, obligations, and laws whether they are average citizens or attorneys and judges. What higher calling has been imposed upon any citizen walking the face

of this planet than to be a U.S. Supreme Court Justice and be able to do "what is right." Petitioner contends this is not just a decision that would influence thousands or millions of individuals in this country but even decisions that would affect one or a few in a particular class whether it "makes the headlines" or fosters the political notoriety and high profile fame of the presiding justice or not. Petitioner regrets that Justice Brandeis, Justice Holmes, Justice Frankfurter, and Justice Douglas are not with us at this time to set examples for us all. Certainly Justice Warren or even Texas' U. S. District Court Judge William Wayne Justice may be frowned on by the right wing of our political spectrum but at least they were honorable and conscionable and stood their ground on issues protecting average individual's civil rights and liberties and attempted to foster what godly men should in that position.

Petitioner contends that there is very little case law regarding extensions of time for appellants to file their appellant's brief or regarding requests by appellant's for transmission of case files from U. S. District Court to Fifth Circuit Court of Appeals or eventually to the appellant for

full and adequate preparation to file an adequate and accurate appellant's brief. There are numerous cases involving the deadlines for filing notice of appeal and even in those cases, there are many relaxations of rigid policies in that particular area for good cause. Certainly extension of time to file appellant's brief is nowhere near as rigidly construed as the time limits for filing one's notice of appeal. Petitioner contends that there is also a dearth of case law on judicial abuse of discretion, judicial cronyism, and fraternity-minded behavior and rewarding one's cohorts by dismissing abusively potentially meritorious cases of average citizens, and almost no cases of significance in regards to judicial corruption and the holding of judges to any acceptable and reasonable standard of behavior and their abuse of discretion and blatant self-serving, greedy corruption at times. Petitioner has elucidated the Federal Rules of Appellate Procedure and the Fifth Circuit Court of Appeals Local Rules and also has delineated the 9 Moore's Federal Procedure and Wright and Miller's Federal Procedure remarks concerning extensions of time to file briefs should be construed liberally and granted liberally unless multiply filed

and abused. This is not the case for Petitioner especially in regards to the blatant misconduct and disregard to rules, statutes, prevailing case law, and any sensitivity to propriety by the U. S. District Court judge, magistrate, clerk, and the Fifth Circuit Court of Appeals judges, clerks, and case mangers. Although Petitioner is convinced that these collusionary complicitous "assistants" to these power-broking and influence-peddling law firms representing the defendants in this case, premeditatedly made the outcome a foregone conclusion by their numerous means of using technical, procedural, and logistical nuances to dismiss particular cases. Petitioner is going to make an attempt to, through his "Reasons for Granting the Writ" explain the rationale for this so that this honorable Supreme Court of the United States body can restore the integrity and honor "trashed" by the U. S. District Court and Fifth Circuit Court of Appeals in this case heretofore.

REASONS FOR GRANTING THE WRIT

I & II

I. IT WAS INAPPROPRIATE, UNJUST, AND ABUSIVE FOR THE DISTRICT COURT AND THE COURT OF APPEALS TO DEPRIVE PETITIONER OF HIS APPEAL BY MISHANDLING THE RECORD

AFTER NOTICE OF APPEAL WAS FILED, FAILING TO ADHERE TO F.R.A.P. PROCEDURE, AND DENYING A REASONABLE FIRST EXTENSION OF TIME TO FILE APPELLANT'S BRIEF.

II. THE DISREGARD FOR ADHERENCE TO FEDERAL RULES OF APPELLATE PROCEDURE TO CREATE AND PREMATURELY COMMENCE HIS BRIEFING SCHEDULE INABILITY TO ACCESS THE COMPLETE TRANSCRIPT BY APPELLANT IS OVERLY RIGID AND HIGH-HANDED TREATMENT OF A PRO SE LITIGANT ADDRESSING COMPLEX AND CONTROVERSIAL ISSUES WHEREIN THE "COMMON POLICY" IS TO ALLOW THE APPELLANT TIME, ESPECIALLY ON FIRST APPLICATION TO ADEQUATELY AND COMPLETELY PREPARE AND SUBMIT HIS BRIEF AND HAVE ACCESS TO THE CASE DOCUMENTS WHEN OTHERWISE INACCESSIBLE, WHICH IS A STANDARDLY APPLIED AND RELATIVELY FREQUENT POLICY BY THE FIFTH CIRCUIT COURT OF APPEALS.

After filing a meritorious lawsuit albeit embarrassing and incriminating to defendants and the legal and judicial system as a whole, Plaintiff and his counsel vigorously and diligently pursued prosecution of this case only to have frustrating obstructions to discovery and other pretrial travesties premeditatedly done to make the dismissal of this case a foregone conclusion. After the precipitous dismissal of this case and appropriate "Notice of Appeal" was filed by Petitioner, appropriate and timely procedural fulfillments by Plaintiff were accomplished only to have the technical, procedural, administrative and logistical obstructions by the U. S. District Court and it's clerk's office collude with the defendants in "sabotaging" attempts by plain-

tiff to have the F.R.A.P. and Fifth Circuit Local Rules adhered to in conjunction with prevailing case law, standard operating procedure relative to other cases, and some semblance of consideration and fairness given to plaintiff in his attempts to have an opportunity to adequately fully and completely and accurately brief his case so that it could be presented to the review appellate courts for their consideration. The abuse and application of every discriminating rule and procedure interpretation was applied to plaintiff and petitioner to obstruct his ability to brief his case and therefore obstruct not only his appeal process but justice. The flagrant flaunting of such deprivation, abuses and discrimination against plaintiff and petitioner is probably the most heinous of the injustices committed.

"Notice of Appeal" filed August 18, 1989 (App. H) was not docketed until September 15, 1989 and no agreement of the parties or orders from the district or circuit court were executed to retain all of the records in the district court judges and clerks possession. Petitioner designated the records to be transmitted which was not done. Transcription of statement of facts was difficult to obtain even

though payment and arrangements were done early on by petitioner. One particular statement of facts was not corrected until late May 1990. Request by defendants for sanctions and appeal dismissal filed August 10, 1989, in the Fifth Circuit Court of Appeals was denied by the Fifth Circuit (App. D) only to be considered by the U. S. District Court and granted on presentation later on March 25, 1990. This court made nearly inaccessible the file for Petitioner to review in preparation of his appellants brief even knowing that his attorney had abandoned him and taken all of his records from him. The complete record had not been transmitted from district to circuit court but allegedly on April 13, 1990 a briefing schedule which appellant received some 2 weeks later on April 26, 1990 (App. K) was sent to Petitioner giving him 40 days from April 13, 1990 to file his appellants brief. Petitioner was assured by deputy clerk Windhorst and case manager Varino that requests for extension of time in this complicated case being pro se and applying on the first occasion would be surely granted. Petitioner requested transmission of the records on appeal (App. L) May 12, 1990 and on April 20, 1990

submitted a request for extension of time to file appellants brief (App. AC) for the Fifth Circuit court per Fifth Circuit case manager Varino's instruction. On May 23, 1990 the Fifth Circuit clerk stated this appellants extension request would be presented May 30, 1990 to the Fifth Circuit panel via correspondence (App. M) and appellant on June 1, 1990 responded to defendants objection for this extension of time and transmittal of record which were ultimately denied by a single panel member judge Jerry Smith June 5, 1990 (App. A). Appellant on June 18, 1990 submitted his "request for rehearing, etc" (App. O) which suggested disqualification of Judge Jerry Smith under U.S.C. § 455 and adequately explained good cause reasons for the extension previously denied. This also was denied by three member panel (App. B) on July 5, 1990 which culminated in this case's dismissal (App. C) July 9, 1990.

Appellant and Petitioner pointed out that on January 29, 1990 (App. P.) U.S.D.C. clerk sent Fifth Circuit clerk request for delay in fulfilling local rule 11.2 obligation of the U.S.D.C. clerk office. This was not within 15 days of the filing of "notice of appeal" per F.R.A.P. 11 and addition-

ally on February 23, 1990 (App. Q) and March 19, 1990 (App. R) the same request was made by the U.S.D.C. clerk's office. On March 27, 1990 (App. S) Fifth Circuit clerk informed U.S.D.C. clerk that "the records should be complete for the purposes of this appeal. We would appreciate your now forwarding the record forthwith pursuant to F.R.A.P. 11. (Partial records)." Petitioner contends there is no order of the U.S.D.C. or Fifth Circuit court or agreement of parties to allow for "partial record" or other divergence from or modification of the standard rules of procedure in handling the record on appeal. Who contrived this process of handling the record without documentation of such in the file of this case? Is this simply another of the illegal exparte communications between judges and clerks and courts to accomplish their premeditated purpose of prejudicing certain individuals' cases hopefully to assist in their premature demise?

Yet on April 6, 1990 (App. T) the Fifth Circuit clerk was informed by the U.S.D.C. clerk that additional extension of time was requested because of "motions pending" alluding to the March 21, 1990 motion for reimbursement

of fees and expenses for sanctions against plaintiff, which was filed some six months after plaintiffs filing "notice of appeal" and not within the jurisdiction of the U. S. District court. The U.S.D.C. clerk very astutely and cunningly attempted to utilize the misinterpreted exception that a statement certifying the complete record was in their possession and sending such copy to the Fifth Circuit court assuming it would suffice as opposed to following the "letter of the law" in the rules of appellate procedure for handling such record. On April 11, 1990 (App. U) U.S.D.C. clerk informed Fifth Circuit clerk that "the following documents are transmitted" . . . "partial record per your request". There was no record sent except a statement that they had the record in their possession and that is inadequate according to any rules of appellate procedure, prevailing case law, or standard operating procedure in handling most cases. This cunning deception is further assistance in obstruction of justice in Petitioner's prosecution of his cases in appellate review. On April 13, 1990 the Fifth Circuit court clerk informed the petitioner (App. V) that the "record on appeal has been filed" indicating that the

"record on appeal is being retained in the district court. partial record on appeal has been filed on this date." This document is similar to the April 13, 1990 (App. K) document and also misrepresents that any of the records had been filed by stating that a "partial " record was filed. This is not just "semantics" but fails to comply with the F.R.A.P. and LR of the Fifth Circuit. On April 20, 1990 (App. W) the U.S.D.C. clerk notified the Fifth Circuit clerk that the "partial record on appeal per your letter" was transmitted. Petitioner claims that no such letter exists in this case file for justification of such according to F.R.A.P. and Fifth Circuit local rules requiring agreement of the parties or order of the district court or Fifth Circuit court, especially after requests for transmittal of the record by one of the parties formally submitted and filed in both courts. On April 30, 1990 (App. X) the Fifth Circuit clerk informed the U.S.D.C. clerk that "it would appear. . .the record should be complete for purposes of this appeal. We would appreciate your now forwarding the record forthwith pursuant to F.R.A.P. 11 (partial record)." There was a notation on the document stating that the "record cannot go, motions pend-

ing, RV notified-May 4, 1990." Again May 21, 1990 (App. Y) U.S.D.C. clerk informed Fifth Circuit clerk that further extension was requested because of motions pending indicating again motions filed March 21, 1990 and May 16, 1990 both of which were filed nearly 8 and 10 months after notice of appeal was filed and certainly abrogated the U.S.D.C. jurisdiction and should not have been used to preclude transmittal of this record on appeal. On May 31, 1990 (App. Z) the Fifth Circuit clerk informed petitioner that the corrections of a particular transcript which had been delayed by the court reporter for the magistrate in the U.S.D.C. would be submitted for consideration to the Fifth Circuit court most saliently in petitioners mind to indicate further failure of completion of the record and premature issuing of the briefing schedule by Fifth Circuit case manager some two weeks prior to this date. Again on July 2, 1990 (App. AA) the U.S.D.C. clerk informed the Fifth Circuit clerk that the "record is incomplete in this court at this time". This was the "reason for delay in the above mentioned appeal". On the front sheet of the index of this case (App. AB) the cause is listed as "Right to

Due Process of Law in Connection for a State Court Custody Suit 42 U.S.C. § 1983 and 28 U.S.C. § 2201 and 2202. Petitioner contends this is a prejudicing and biasing attempt to characterize this as pertaining to a state court custody suit which it does not. Certainly the emotional and blood boiling bias and prejudice that the judiciary holds in regards to divorce and custody matters "turns them off" to considering the real merits of a law suit which is mischaracterized as relating to "state court custody suit" when it is definitely not. The issues of the 1983 civil rights aspect of this case were foreclosed by the premature severing of that portion and dismissal of many of the defendants by the presiding U. S. District Judge DeAnda in this case for "damage control" and to make the "burden of proof and threshold to be met" much more difficult to surpass summary dismissal. It is apparent by perusing the "docket sheet" (App. AB) on page 59 Appendix that after petitioners "notice of appeal" was filed on August 18, 1989, numerous matters were submitted for consideration after this court lost it's jurisdiction to the Fifth Circuit court. The orders of May 12, 1990 (App. AE) and June 5, 1990 (App. AF)

dealt with issues filed subsequent to petitioners "notice of appeal" as was the rationale for petitioner filing (App. AD) "plaintiffs motion to show authority" in the U.S.D.C.

As listed by petitioner in the section of "Constitution, Statutes, Rules and Treatises" the violation of several F.R.A.P. and Fifth Circuit Local Rules has been demonstrated. The content of the record to be transmitted after filing "notice of appeal" was not complied with. The cunning surreptitious attempt to substitute a single sheet of paper indicating that the entire file was in the U.S.D.C. clerks and judge's possession does not comply with the rule and prejudices appellant who needed access to that file to fully and adequately prepare his appellants brief which was nearly totally inaccessible to him at the U.S.D.C. level. The difficulty in obtaining statement of facts and clarifying one particular statement of facts with significant "delay" makes the record incomplete until this has been fulfilled. Petitioner made Herculean efforts and fulfilled his obligations in completing and having transmitted the record on appeal which fell on "deaf ears". The record was not bound by the clerk nor were the pages sequentially numbered nor

did the court reporter request extensions of time nor did the clerk submit a record of lists of documents correspondingly numbered with this "alleged certified document" that the record was on file in the U.S.D.C.. No such certified document exists in this case's file except that previously mentioned in correspondence from U.S.D.C. to Fifth Circuit court clerk. There was no order of the district court or the Fifth Circuit court nor agreement stipulated by the parties for retention of this record after notice of appeal was filed and jurisdiction accrued to the Fifth Circuit, especially in light of the insistence by the petitioner to transmit the record so he could gain access to it in preparation of filing his appellant's brief. No certified copy of docket entries was transmitted by the clerk, and even had it been done, that is subject to the right of petitioner to designate the record to be transmitted which petitioner did September 29, 1989 and again with his request to transmit the record May 12, 1990. The court reporter did not request an enlargement of time for filing a statement of facts with corrections made in one particular hearing which were submitted near the end of May 1990 (obviously too

late for utilization in appellant's brief prior to dismissal of extension request). The clerk must determine when the record on appeal is complete or else request additional time by enlargement until such is complete. Certainly until the file is complete it cannot be sequentially numbered and bound then transmitted to the Fifth Circuit court which would then start the "briefing schedule." The clerk of the U.S.D.C. did not enter appellant's appeal until nearly one month later. On which occasion did the Fifth Circuit court clerk and case manager assume that the transmitted record was complete and then instituted a briefing schedule for petitioner? Up to and after the time of briefing schedule there were still delays requested by the U.S.D.C. clerk's office to make the appeal record "complete".

Both deputy clerk and case manager of Fifth Circuit court stated that first request extension of time to file appellant's brief was reasonable and routinely granted at the Fifth Circuit; a single judge of a court of appeals may grant or deny requests but cannot dismiss or otherwise "determine an appeal outcome" without review. Certainly the clerk can "enlarge a time for filing designations and . . .

and filing briefs. . . . A single judge may enlarge for good cause times for extensions but not for initiating an appeal.

The district court failed and refused for 10 months to compile and transmit the record of this case to the court of appeals as required by rule 11, F.R.A.P.; extensive exparte and deceptive maneuvering occurred and April 3, 1990 the clerk prematurely issued appellant's briefing schedule with full knowledge of the extenuating circumstances that should have precluded that act. The file was retained allegedly to hear pre-appeal matters but it is clear that post-appeal matters were being adjudicated without U.S.D.C. jurisdiction and as means of delaying and precluding transmission of this record to the Fifth Circuit where petitioner could gain access to it to fully and adequately prepare his appellants brief. Case manager of Fifth Circuit stated that petitioner would be deserving of a "new briefing schedule" but after "exparte contact with the Fifth Circuit court panel" she informed petitioner that he would have to file a formal motion for extension and she was not allowed to grant such in this particular case.

"The steps in assembly and filing of the record are governed by rules 10, 11 and 12" 9 Moore's Federal Practice, § 210.03, page 10-11 (3/80). The district court clerk repeatedly obstructed and delayed completion of the record while orchestrating a symphony of harassing,tardy, frivolous, post-judgement motions by the powerful defendants and their unprincipled mercenary councils. Petitioner has in spite of onerous interferences and obstructions met his burden diligently and fully to have the record complete and transmitted. The U. S. District Court Judge and Clerk knew that this case was going to be "deep-sixed" and petitioner contends that the illegal exparte interlocking network between the U. S. District Court and Fifth Circuit Court of Appeals "cronies and good ole' boys" assured this. No due process order "for use in U.S.D.C. pending the appeal" has been filed. No order of the court to transmit a certified copy of docket entries in lieu of the entire record has been filed. No stipulation by the parties concerning such has been agreed to or filed. "When an appeal is taken from a final judgement that disposes of the entire action below, the record is no longer needed in the district court

and there is no inconvenience attendant upon its transmission as the record on appeal." 9 Moore's Federal Practice, § 211.12 (2), p. 11-40(3/80). Rule 12(b) establishes the check point and briefing schedule sequence and the Fifth Circuit clerk has never been authorized to file a briefing schedule pursuant to rule 31, F.R.A.P.. The execution of the unauthorized premature briefing schedule invited and issued under questionable circumstances by the clerks of the U.S.D.C. and Fifth Circuit courts attempted to justify itself by cryptic related transmittals by U.S.D.C. clerks to and from Fifth Circuit clerks. It is grossly unjust and unconscionable to effectively dismiss appellants entire appeal due to the clerks intentional and mal-administrative, negligent, and dereliction of clearly prescribed and routinely applied rules,duties,customs and practices of the court of appeals and its clerk.

Rule 11, as amended in 1979, imposes no duty on the appellant to see that the record is transmitted within any fixed time and eliminates all motions for extension of time for transmission. The transmission of the record under the amended rule is the clerks work and dereliction and

prompt transmission purely a matter of judicial administration. 9 Moore's Federal Practice, § 211.05, p.11-18 (3/80).

The crucial intentional and negligent error is the clerk of the court of appeals fraudulent notice of receipt of and the filing of the "record transmitted pursuant to Rule 11 b, or the partial record transmitted pursuant to Rule 11 (e), (f), or (g), or the clerks certificate under Rule 11(c)" and thereby triggered appellants briefing schedule under Rule 31(a), F.R.A.P.. To deprive an appellant his right of appeal in this extremely controversial case under the foregoing circumstances of total laxity and probable malice by the clerks of the District and Appeals Court in light of the courts "general policy", practice and custom to grant liberal extensions of time to prepare and file appellants brief is an extremely harsh and unreasonable prejudice and bias against appellant.

The want of published decisions on the subject suggest that extensions of time requested before the time has run are granted with a much more generous hand; and occasional observations in the decisions verify this suggestion.

F.N.11: see e.g., Business Forms Finishing Service, Inc. v. Carson, 463 F.2d 966 (7th Circ. 1971) in which the appeal was dismissed for failure to file a brief within the eleventh extension of time, perhaps an unusual example of this tolerance. 9 Moore's Federal Practice, § 226.02 (2), p. 26-7(3/80).

There are very few cases available concerning the denial of first extension to file appellants brief and the mishandling of the record on appeal which ultimately culminates in the demise of the appellants brief and then his entire case.

In Supreme Court Practice by Stearn, U.S. v. Ohio Power Co. states the Supreme Court Justices "have consistently ruled that the interest and finality of litigation must yield where the interest of justice would make unfair the strict application of our rules. This policy finds expression in the manner in which we have exercised our power over our own judgements, both in civil and criminal cases." In Price v. McGlathery, harsh sanctions such as dismissal or rigid applications relative to motions filed by litigants which have severe outcomes must show "a clear record of

delay or contumacious conduct by the plaintiff and lesser sanctions (actions) would not serve the best interest of justice." Intentional delay by the plaintiff or actual significant prejudice to defendant must be considered. Certainly in denial of an extension to file appellant's brief which was not predicated on appellant's failure to perform adequately appears to be not only harsh but intentionally frivolous and political in nature. In Tuney v. Ohio a fair trial and a fair tribunal is a basic requirement of due process. Fairness requires absence of actual bias and for a judge to perform his high function in the best way "justice must satisfy the appearance of justice" (Offutt v. U.S.). In Adamson v. California judges overly political influence turning unduly them to subjective preferences of the parties makes the judicial decision maker a violator of the impartial tryer of law and of other constitutional granted rights to access to the courts and equal application and enforcement. In petitioner's case one can understand as in Bavouset v. Shaw's of San Fran. that sometimes confusion results from the withdrawal of a litigants council and that should be considered in ruling on future motions and applying rigid standards tc that liti-

gant. In cases considering "notice of appeal" denials of extension to file, a rigid standard is followed. In cases such as Kicklighter v. Nails by Jenee and Cole v. Tuttle, the court was unwilling to deny an appeal on technical difficulties resulting in harsh penalties as it was not keeping with the "spirit of the Rules and Justice". Certainly extension of time to file appellant's brief is nowhere near comparable to the rigidity utilized in time constraints on filing ones notice of appeal. In Dalminter Inc. v. Jesse Edwards, in addressing federal cases such as R.I.C.O. matters, the dismissal of a case or refusal of motions of relief must be considered with more laxity if "honest mistakes " are made and characterized and justified as such. Certainly in Draper v. Washington and cases similar the need to satisfy certain conditions or to convince a judge that there is merit and no frivolousness to an allegation in a case before one is allowed to appeal is harsh and arbitrary besides capricious and constitutionally abusive.

In Florida v. Rodriguez the U.S. Supreme Court as the Court of last resort in the federal system, has supervisory authority and therefore must occasionally perform a "pure

error correcting function" in federal litigation. In Hurtado v. California the classic statement in the Supreme Courts jurisprudence is that "law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case, but. . .the general law. . .so that every citizen shall hold his life,liberty,property and immunities under the protection of the general rules which governs society thus not excluding due process of law," . . . "Arbitrary power enforcing its edicts to the injury of the persons and property of its subjects is not law whether manifested as the decree of a personal monarch or an impersonal multitude." In Grannis v. Ordean the fundamental requisite of due process is the litigants desire and right "to be heard". In Liljeberg v. Health Services the aspect of judicial corruption with secrecy addressed the issues that such "star chamber" approach to judicial propriety creates fraud, dishonesty, deceit and misrepresentation. In both Lindsey v. Normat and Griffin v. Illinois, the opportunity to appeal is cherished and when not granted to some, capriciously and arbitrarily denied to others, violates the equal protection clause and goes to the

heart of our belief "objective review by appellate courts" of lower courts. Certainly in Marbury v. Madison the concept of judicial review as "the fundamental and paramount will of the nation" seems to be fading in this country with time. The U.S. Supreme Court has its own personal agenda to hear approximately 100 cases each year and they must be of a particular character before they will or can address them. This certainly leaves the vast majority of citizens unserved by this U.S. Supreme Court if it feels it is "put upon" and that its docket is being congested by citizens who feel they are treated unfairly by lower courts and wish, deserve and should be given the fair and impartial appellate review as our constitution, founding fathers and public perception intends. Perhaps the accelerated corruption and blatant disregard for rules, procedures, prevailing case law and constitutional protections demonstrated at U.S. District Court and Circuit Court levels is because of their assurance that this will go unchecked by the U.S. Supreme Court either by virtue of their personal agenda or their known desire to dismiss essentially all cases unless it strikes their "fancy". One cannot eliminate corruption;

arbitrariness, capriciousness, retaliation and illegalities in our lower courts if the most supreme appellate body refuses to consider the average citizens complaints on review.

In Marshall v. Jerrico the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by effected individuals in the decision making process is the most paramount importance. Failure of securing a fair disinterested and impartial tribunal creates a lack of due process for appellants. In Matthews v. Eldridge the degree and type of procedural protection that is due can be determined by weighing the private interests that will be affected by official actions and the risk of erroneous deprivation of such interests through the procedures used and the probable value, if any, of additional or substitute procedural safeguards. Certainly, the government's interest is in the fiscal and administrative burdens created by these additional functions, and the unquantifiable human interest in receiving decent treatment must be considered. Justice Holmes, in McAuliff v. New Bedford, states rights stemming from constitutional or common law sources and mere privileges bestowed by government is the

"court adhered to distinction" though the latter and not the former could be withheld absolutely and conditionally. In Alcorn v. U.S. Interstate Supplies, the decision for no new trial before appealing in federal court is addressed. Certainly this and other decisions are attempting to set precedent that the most expeditious and less obstructive way an individual can access himself to the appellate process is most desirable. In National Hockey League v. Met Hockey Club the promulgation that sanctions less severe than dismissal (or high-handed motion ruling) even if the litigant was negligent, serves to penalize by punishment rather than deterance and was advised against in a case where litigant failed to make discovery. Certainly, the various circuit courts feel differently at different times concerning the laxity or rigidity they adhere to certain rules and guidelines applied to litigants especially depending on their specific and particular situation. When intentional abuse by rigid standards and severe penalties are foisted upon a litigant consistently throughout his case's litigation, the circumstantial accumulation renders that judge and his

"assistants" incredible, unscrupulous, and lacking integrity and conscionability.

In Nicodemus v. Chrysler Corp., judicial bias was clear in remarks made by a judge which disqualified him because of these extra-judicial sources. Petitioner contends that Judge Jerry Smith's prior participation in litigation as city attorney for Houston involving this petitioner antagonistically disqualified him because of that conflict. Instead, Judge Smith acted vindictively and in retaliation and then was supported by his "cohorts and colleagues."

This protective proclivity of the judges of the Fifth Circuit Court of Appeals smacks of "protecting each others rears" through the system of "good-old-boy-get-along-gang" which is in diametric opposition and contra-distinction to all the basic tenants of our judicial heritage and perceived judicial propriety. Because of this, it is even more important for the Supreme Court to become more involved and allow average citizens to have their complaints reviewed and liberally allow them remanded for consideration or reviewed and considered at the U.S. Supreme Court level or else our system of justice is facially intact but in reality

and practice, is "bankrupt" and undependable in chaos. In Olmstead v. United States, Justice Brandeis warned that individual morality, integrity, courage, and insight were necessary and that hypocritical justifications imperils our government and society. Our government teaches the whole people by its example, and if it becomes the law-breaker, it breeds contempt for the law. For government to commit crimes to secure the conviction (or selective dismissal) would bring terrible retribution. Justice Holmes states about the moral principle of the judiciary that the government should not itself foster and pay for other crimes when they are the means by which the evidence is to be obtained. Government as judge and prosecutor may have its hand in dirty business and judges should not be allowed such inequities to succeed. In Reserve Mining Company, the 8th Circuit removed the district judge after deliberate denial of due process to the parties, along with gross bias exhibited against one litigant. In Schacht v. U.S., there was relaxation of rigid standards and procedures such that the best ends of justice shall be met and according to their requirements. In Smith v. Jackson Tool

and Dye the interests of "spirit of law" and "merits of case" should outweigh the procedural adherence when ruling on motions o. finality by judges. In Ryland v. Shapiro, the constitutional right of access to the courts is basic to our system of government, addressing Constitutional Article 4, Amendments 1, 5, and 14, and 28 U.S.C. § 1983 in a civil rights law suit. Conspiracy to obstruct justice here along with the discriminatory, class-based, personal animus is discussed which Petitioner contends prevails in his case. Also, Yick Wo v. Hopkins discussing the ordinance which appears fair on its face and impartial in its appearance was adjudicated as representing a class-based discriminatory personally invidious animus to one individual who represents similar others in a non-class action lawsuit. Petitioner contends his pro se status and his revealing the "dirty laundry" of the power-brokers and influence-peddlers of the legal and judicial system creates this same class-based discriminatory personally invidious animus toward him. This precludes his right to fair and impartial tribunal, access to the courts, access to be heard, equal application and enforcement of laws and substantive due process

through conspiracy of the administrative and judicial system where average citizens must redress their ills. In McFerran, discussion of a R.I.C.O. case dismissal on technical grounds indicates its inappropriateness when the merits are overwhelming and outweigh such technicalities. In U.S. v. Johnston perhaps the courts policy to "not grant certiorari" to review evidence and discuss specific facts; "is the license that the district court and the court of appeals used to avoid review of their scheme to protect their dishonest, fabricated, and fictitious scenarios to cover up, dismiss and discourage legitimate claims that foster increased expense, family destruction, public bitterness and cynicism and ultimate destruction of our society. In U.S. v. Brown, the putrid atmosphere of tyranny and corruption of "secretness" protected and encouraged by immunity from accountability and failure of review by higher appellate courts can be only redressed by opening all court proceedings and voiding and sanctioning all results that are tainted by partiality, dishonesty, fraud, deceit, and misrepresentation. Justinian stated over 1,000 years ago "impartiality is the life of justice." There is no room for bias and preju-

dice. It countenances no unfairness and upholds no miscarriage of justice. Bias and prejudice can deflect the course of justice and affect the measure of its judgments.

III & IV

III. THE ACTUAL DISHONESTY, FRAUD, DECEIT, AND MISREPRESENTATION OF A DISTRICT COURT AND THE FIFTH CIRCUIT COURT OF APPEALS IN THEIR PROCEEDINGS AND ACTIONS IN THIS CASE DEMONSTRATE REVERSIBLE DEPRIVATION OF FAIR AND IMPARTIAL TRIBUNAL, SUBSTANTIVE DUE PROCESS, EQUAL APPLICATION AND PROTECTION, AND ACCESS TO THE COURTS, BOTH IN THE TRIAL AND APPEAL COURTS OF THIS CASE.

IV. THE EXTRAORDINARY AMOUNT OF TIME, EFFORT, MONEY, AND SIGNIFICANTLY COMPLEX AND CONTROVERSIAL ISSUES INVOLVED IN THIS CASE WHEREIN DEFENDANTS REPRESENTED BY THE MAJOR POWER-BROKER AND INFLUENCE-PEDDLER LAW FIRMS WHO HAVE REPRESENTATIVE JUDGES ON THE FIFTH CIRCUIT COURT OF APPEALS OR VERY CLOSE TIES THERE, WHICH ALLOWED THE FIFTH CIRCUIT COURT OF APPEALS SINGLE JUDGE, THEN THREE-MEMBER PANEL OF JUDGES TO MORE EASILY BE RIGID WITH APPELLANT SO AS TO PRECLUDE HIS FILING AN ACCURATE AND COMPLETE BRIEF AND THEREBY OBSTRUCTING HIS APPEAL PROCESS AND JUSTICE.

The constitution of the United States preamble along with its amendments 1, 5, 7, 8, and 14, and articles 3 and 4, have been quoted in Petitioner's "Constitution, Statutes, Rules, and Treatises" section of this petition. Nowhere is it more important than in our federal court system that impartial and fair tribunal, equal access to the courts to be heard, equal application and enforcement, and substantive

due process be given the greatest of considerations. State courts in Texas are run by elected judges, many of which are "bought and paid for" and brag about this in the media. One's disenchantment with this dilemma can only be uplifted by one's confidence in the federal judicial system to have a higher degree of integrity, professionalism, conscionability and ethics or else our system of justice is totally fraudulent and bankrupt. If the power-brokers and influence-peddlers through the "good-old-boy-get-along-gang" wish to terrorize and brutalize and destroy an individual or his family, friends, or his "class" similar to him, they can, in our state court system by appellate courts rubber-stamping trial courts and state supreme courts refusing to even consider the court of appeals decisions except in rare instances. Our citizens have looked to the federal courts to protect their fundamental rights and liberties under possibly a current misconception, but still exists that we are protected by our heritage of the constitution. Citizens have become totally alienated and disenchanted with their legislators and realize that the government exists for self-serving greedy purposes, with secondary benefits to citizens.

The federal judiciary has been above this in the past and "keeps the thugs and thieves in line." It now appears through evolution that our judicial courts are becoming public opinion reflectors, policy and legislative makers, and individuals who can be lobbied, influenced, and bribed much like our "corrupt congressional representatives."

Petitioner filed under 42 U.S.C. § 1983 the civil rights complaint for injunctive, declarative and damage relief which happened to have started from a divorce proceeding but continued through other non-divorce related litigation and even into bankruptcy areas. Petitioner to this day has had no contact with his children for the past three years because of the deprivations, unable to be addressed effectively in the judicial system by dismissal of this part of Petitioner's original lawsuit by U.S.D.C. presiding judge James DeAnda. Under 18 U.S.C. §§ 1961 and 1966, R.I.C.O. acts were alleged because of the increasing sophistication and development of the conspiracy of racketeers in this enterprise of defendants. The general distaste of federal courts for the civil R.I.C.O. statute enacted by Congress because of the failure of district and U.S. attorneys

to redress ills perpetrated upon its citizenry (because of their political and financial manipulations), and oftentimes R.I.C.O. and 1983 civil rights suits surrounding access to children as one element of the case automatically precludes its full and complete fair hearing. The original complaint of Petitioner and its amended complaints are so voluminous and complex as to be unable to be discussed even briefly in this petition. The obstruction to discovery by the presiding U.S. District judge and magistrate and clerk's office is blatantly apparent. The "delay" created "staleness" in this case by Judge DeAnda and was planned to make its dismissal a foregone conclusion. Petitioner and his attorney spent many hours and much effort and money to address this appropriately. To discover the more incriminating and embarrassing testimony elicited engendered more rigid obstruction by the "collusion" of the presiding U.S. District judge and magistrate, U. S. District Court clerk, defendants and their power-brokers and influence-peddler attorneys, and the business and commerce industrial cartel of the legal and judicial system in Harris County, Texas. The October 16, 1987 "Memorandum and Order" (App. G)

completely misrepresents the facts of this case. Once this false premise has been established, the court attempted to justify it with statutes and case law. The aspect of misrepresentation permeates much of the U. S. District Court and circuit court debacles. Petitioner was denied adequate discovery and after over two years delay wherein correspondence could not "get this case off square A" the judge of this case refused to allow discovery until the first pretrial conference set the guidelines and rules. When discovery commenced and critical witnesses were deposed when incriminating evidence was elicited, the judge or magistrate would stop the discovery and have another hearing which was often postponed and rescheduled further obstructing the discovery process, which has by case law been given greater latitudes in R.I.C.O. cases in the interpretation of cases such as Hickman v. Taylor. Federal courts have much broader discovery guidelines to begin with and this was reemphasized in Salter v. Upjohn, where although the court has broad discretion over discovery matters, adherence to prevailing case law should be allowed so that full and complete discovery can be allowed to overcome the

burden of the R.I.C.O. statute prerequisites to overcome summary dismissal (Devitt & Black Supp. 1987) and (Civil R.I.C.O. Statutes and Implied Elements, 14 Tech. L. Rev. 377 (1983), Patton.)

The refusal of many deponentsto appear for their deposition without courts'compelling or sanctioning them for such indicates the apathy and lack of concern for the seriousness of this case by presiding U.S. District judge and his magistrate. The inability throughout this case to depose the prime defendant, power-broker and influence-peddler Defendant Fullenweider, and to be inadequately allowed to depose because of restrictions Defendant Nancy Linkous, Muriel Flake, and Don Fogo further indicate the bad faith of the presiding U.S. District judge and magistrate to have this case terminated. The continuing to address new submitted motions after notice of appeal was filed by Petitioner and using this excuse as one of many not to transmit the transcription of statement of facts to the Fifth Circuit Court of Appeals ultimately precluded Petitioner's appeal and culminated in his cases dismissal. This case is extremely complicated and even without the

improprieties delineated heretofore by Petitioner would require an "Extension of Time to File Appellant's Brief" by even the most talented attorney with large law firm support staff. For Petitioner pro se without assistance or financial resources and absent records by his attorney's abandonment there were good cause reasons for an extension. The rules and regulations violated by the court and clerk's office have been previously discussed and are additional rationale for granting the extension of time to file appellant's brief. The fact that Fulbright and Jaworski were prime defendant attorneys and who have Carroll Randall King as an influential member of the Fifth Circuit is another reason why Judge Jerry Smith and the three-member panel should have exercised more discretion and caution before cavalier denial of Petitioner's extension of time to file appellant's brief. The fact that Andrews Kurth was appointed to defend Defendant Nancy Linkous who was not indigent and filed a falsified CJA and in forma palperis affidavit is suspect, considering that one of the most prominent Fifth Circuit political judges is Edith Jones from Andrews Kurth who nearly was appointed to the U.S.

Supreme Court as associate justice. The other powerful law firms representing the defendants or having a direct interest for the defendants and against the Petitioner are well known in this community. In Hamilton v. Stovall, Petitioner Linkous was a participant plaintiff and that case was summarily run through the sieve and ultimately denied petition for Writ of Certiorari; Petitioner hired attorneys and paid large sums of money, and when it ran out, he continued his attempts to attain justice. Instead of being admired and respected by the judiciary, he has been slandered and "beaten down" much like the Russians treated their dissidents, life of Tolstoy and the plight of the Chinese students, Polish freedom fighters, and German Jews in the Nazi Germany holocaust. In Forester v. White, Pulliam v. Allen, Harper v. Merkle, Zarcon v. Perry, and Gregory v. Thompson, the scheme and unconstitutional conspiracy of these judges did not fall within the policy of underlying judicial immunity but fell outside such into the cesspool of abuse. Their dishonesty, fraud, and deceit counters the code of judicial conduct for U.S. judges, ABA Model Rules of Professional Conduct, ABA Model Code of

Professional Responsibility, ABA Model Standards Relating to Judicial Discipline, and the Texas Disciplinary Rules of Professional Conduct for Attorneys. In California Motor Transport v. Trucking Unlimited, NAACP v. Button, Wolff v. McDonnell, Rheaume v. Tx. Dept. of Pub. Safety, and Pulliam v. Allen, there were unreasonable deprivations of due process and access to the courts prohibited by the holdings of those cases' courts. These case[5] parallel Petitioner's plight in his case progression through the U. S. District Court and Fifth Circuit Court of Appeals. In Gleason v. Stewart, and Gleason v. DeAnda, the dismissing orders stated that the presiding judge liberally construed the allegations to support the intended purposes of the complaint; the court errs not only in its order statement but in its intent and motivation. It is a fact that attorneys in general and judges especially despise pro se litigants and state that they hold them to the same standards of attorneys when they really mean they apply a much "more rigid standard" to them without the flexibility given attorneys in similar situations. In Petitioner's case, the R.I.C.O. discovery was restricted to make its dismissal a predetermined,

foregone conclusion; R.I.C.O. is constructed as a mode of a treasure hunt (Sutliff Inc. v. Donovan Co., 727 F.2d. 658, 652 (7th 1984). Certainly, Thomas Moore's individual morality and integrity compared to Francis Bacon's arrogance and self-serving greed cost high court judge Moore his head and gained Bacon great wealth and notoriety. Only until Lord Coke prosecuted Francis Bacon did he receive his just desserts (Borkin The Corrupt Judge). In Peacock Records, when a judge has relied on extra-judicial sources and indicates personal bias and prejudice, he should be disqualified and his decision reversed. In Murchison, a fair trial and a fair tribunal is a basic requirement of due process. Fairness of course requires the absence of actual bias in the trial of cases. In Marshall v. Jerrico, the due process clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. The closed shop judicial industry of the national justice system oppresses those "who take on the system" regardless of how heinous the crimes are and how they brag about "being above the law" openly in public. In the Matter of DeLucia, a judge fabricated, backdated orders,

and made perjured denials under oath concerning his illegal behavior which resulted in his discipline and suspension. In re Gilbert, when there were higher judicial independence and integrity of the federal courts, this conduct heretofore was not upright and according to law as required by duties and obligations of a judicial officer and his oath to practice before the court or as a judge of the court. A basic premise of our judicial system is that those who serve in a judicial capacity will scrupulously adhere to the disciplinary rules of professional responsibilities and we shall not sanction or ignore deliberate or intentional breeches of these criteria. A judge who does favors with his office is morally an embezzler. A judge who is a man "who can be reached" and plays "Goodfellow" for even a few must be stained and therefore removed. (In re Wieshoff, 382 F.2d. 635 (N.J. 1977) quoting In re Mattera 168 A.2d. 38 (N.J. 1961). In Cincinnati Bar v. Heitzler, a judge flaunted his violation of the canon of ethics and the code of responsibility in discovery proceedings and was addressed with sanctions appropriately. In Haines v. Kerner, the standard of pro se litigants being given flexibility in having

their pleadings liberally construed connotes and infers some degree of laxity in other technical, procedural, administrative, and logistical areas. Unfortunately, this is not the standard and in Birl v. Estelle, the rigid limits of pro se are reemphasized. In Ferguson v. MBank Houston, the application of sanctions to pro se litigants indicates that no license to harass or clog the machinery or overload the dockets by pro se litigants will be tolerated. It seems as though certain attorneys and judges feel that individual citizens have no right to access to the courts to redress their grievances as some interpreters of the articles and amendments of the constitution believe. In re Boyd, schemes to cover up evidence by the judge was addressed by the Florida Supreme Court who admitted the "lack of comprehensive body of law relating to discipline of judges." Also In re Lamotte, and In re Leon, the integrity of judges came to question through improprieties resulting in judicial discipline, etc. In Gleason v. Huckabee, the charges against Judge Huckabee for falsely imprisoning Gleason as a subpoena server were remanded only if the condition of a $500 fine was paid by Gleason who was a pauper, and

this restriction exists much like a pole-tax or other device to preclude justice or constitutional rights. In Malhoit v. So. Cal. Retail Clerk's Union emphasizes the professional code requires that attorneys and judges not engage in conduct that involves misrepresentation or that is prejudiced to the administration of justice; that they not present claims unwarranted by existing law; and that they not knowingly make a false statement of fact or law.

In Mitchell v. Forsythe, there tends to be a less expansive judicial immunity for unconstitutional conduct without prior judicial authorization. Without clearly established statutes and constitutional provision in place which should be known by any reasonable person, then such judicial officer should not violate those without punishment. In Pryor v. U.S. Postal Service, the record must show dilatory or contumacious behavior before any harsh sanction to dismiss should be considered.

In Connelly v. Gibson, a 28 U.S.C. § 1983 complaint should not be dismissed unless it appears beyond doubt that the plaintiff can show no set of facts which would entitle him to relief. Both Haines v. Kerner and Cruz v.

Bello address the liberal construing of pro se pleadings in that regard. This also in Slavin v. Curry, is the standard. In Taylor v. S&D Enterprise, the first extension was granted and only on request for second extension because of other extenuating circumstances was it denied in this case; the court has discretion in cases for procedural and technical error but should not disturb the balance between case merits and rigid technicalities so lightly. In State of Texas v. Gulfwater, a pro se litigant was given latitudes because of the perceptions of lack of legal sophistication which allow tolerance to his conduct. In U.S. v. McKnight, liberal application to fulfilling procedural time constraints, especially in notice of appeal, was indicated for good cause although it was both mandatory and jurisdictional to adhere to specific guidelines. Lawrence v. McCalmont was much like Howard v. King that the existence of any non-frivolous issue on appeal is sufficient to require that the court grant the . . . motion. In Body v. Connecticut, the cost bond should not bar an appeal and access to courts by a litigant was upheld. In Feder v. Toledo and Bibich v. Cower, permissiveness was exercised in granting exten-

sions in many cases where reasonable cause was given in MOTIONS absent delay or prejudice to the opposing side demonstrated. In Delluns v. Powell, when a judge becomes investigative and commits other administrative acts prejudicial to one litigant, then he relinquishes his absolute immunity; in Dennis v. Sparks, the corrupt judge participated in an unconstitutional conspiracy which resulted in no judicial immunity. Most cases on judicial impropriety and/or personal agenda prejudice and/or illegalities are rare as hen's teeth. In Harlow v. Fitzgerald, the objective reasonableness of a official's conduct is considered with discretionary functions in a 1983 lawsuit but clearly established extraordinary participations were not immune if proven. This was considered a new relevant legal standard for the lack of immunity in specific areas. It, however, created greater latitudes of immunity for judges in that process. In Linkous v. Henderson an unsecured creditor was allowed appointment of a large law firm to represent her because she was a non-filing ex-wife of the debtor; the application for appointment was taken under advisement or denied on several previous occasions but was agreed to

only in anger after misrepresentations about Debtor Linkous in Court caused the judge to act precipitously on a motion not before him granting large sums of money to the attorneys at the expense of the estate and real creditors. This case was appealed and was obstructed at all levels with the request for extension of time to file petition for Writ of Certiorari denied by the U.S. Supreme Court. In Linkous v. Johnson, an illegal conspiracy allowing an unsecured creditor and attorneys to take a major asset of the bankruptcy estate (nearly $500,000 value) for their benefit in state court and sanctions imposed upon debtor for bringing witnesses to court to testify to such was appealed and similarly denied at all levels except that extension of time to file petition for Writ of Certiorari was granted but Petition for Writ of Certiorari was denied by the U.S. Supreme Court. In Linkous v. Klevenhagen, plaintiff was falsely imprisoned for 33 days for alleged non-full-payment of temporary child support which went through the state and federal courts and where the U.S. Supreme Court refused to entertain the matter because it "was of a divorce matter." In Linkous v. Linkous, a ridiculous di-

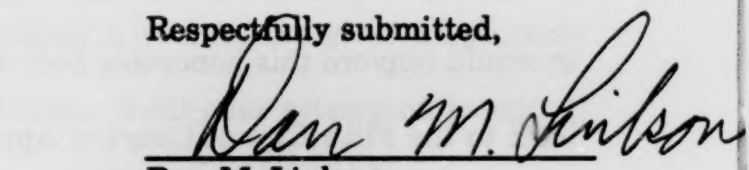
vorce decree was issued wherein Petitioner was without counsel in a jury trial against his ex-wife with power-broking attorneys and was assessed $17,500 per month in child support, $5 million in awards, and given all property plus custody of children. Petitioner attempted to appeal this divorce decree which the court of appeals stated informally was "ridiculous" but the cost bond was increased to $125,000 while Petitioner was in bankruptcy and could not obtain bond or post assets in lieu of increased cost bond. The increased cost bond issue was taken to the U.S. Supreme Court and denied generically without a written opinion. The brutalization of certain litigants without fair redress of ills perpetrated upon them only creates more dissension and cynicism of the public against the institution which is supposed to represent the best this country has to offer in a world of decaying morality and integrity.

CONCLUSION

For these various reasons mentioned heretofore this Petition for Writ of Certiorari should be granted. Petitioner would implore this honorable body to remand this case back to the Fifth Circuit Court of Appeals by approval of his Petition for Writ of Certiorari such that Petitioner has opportunity to brief his case and have it considered on its merits. In the alternative, Petitioner would request of this honorable body to allow briefing of his case with the U.S. Supreme Court and have decision rendered upon its merit by this honorable body. Petitioner contends that review of the propriety of the denial of appellant's extension of time to file appellant's brief which culminated in the dismissal of the appellant's case on review was abuse of discretion of the single judge of the Fifth Circuit Court of Appeals which was upheld not on its merit but for reasons of "judicial fraternity" in controversial decisions and matters such as these. Petitioner would request this honorable body to

review the closely related issues of the other cases involving Petitioner mentioned in the table of authorities in this case.

Respectfully submitted,



Dan M. Linkous
Petitioner, pro se
1526 Kingwood Drive
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Kingwood, Texas 77339
713/358-6838

90-774

Supreme Court, U.S.
FILED
NOV 13 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAN M. LINKOUS,

Petitioner

versus

THOMAS J. STOVALL, ET. AL.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Dan M. Linkous
PRO SE
1526 Kingwood Drive
Kingwood, Texas 77339
(713) 358-6838

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2928

U.S. COURT OF APPEALS
FILED
JUN 5 1990
GILBERT E. GANUCHEAU
CLERK

DAN M. LINKOUS,
Plaintiff-Appellant,

versus

HONORABLE THOMAS J. STOVALL,
ET. AL.,
Defendants-Appellees,

versus

JAMES M. MURPHY, Attorney
Appellant

Appeal from the United States District Court
for the Southern District of Texas

O R D E R:

IT IS ORDERED that appellants' motions for extension of time within which to file their briefs are DENIED.

IT IS FURTHER ORDERED that the motion of appellant, Dr. Dan M. Linkous, for an order directing the Clerk of the District Court to Transmit the entire file to this Court is DENIED.

J. SMITH 6-5-90 /s/
UNITED STATES CIRCUIT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2928

U.S. COURT OF APPEALS
FILED
JUL 5 1990
GILBERT E. GANUCHEAU
CLERK

DAN M. LINKOUS,

Plaintiff-Appellant,

versus

HONORABLE THOMAS J. STOVALL,
ET. AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas

Before WILLIAMS, HIGGINBOTHAM, and SMITH,
Circuit Judges:

BY THE COURT:

IT IS ORDERED that the motion of appellant (Dan M. Linkous) for reconsideration of the Court's order of June 5, 1990 is DENIED.

J.S. 6-25-90 / J.S.W. 6-26-90 / PSK 7-1-90

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2928

U.S. COURT OF APPEALS
FILED
JUL 9 1990
GILBERT E. GANUCHEAU
CLERK

DAN M. LINKOUS,

Plaintiff-Appellant,

versus

HONORABLE THOMAS J. STOVALL,
ET. AL.,

Defendants-Appellees,

versus

JAMES M. MURPHY, Attorney

Appellant

Appeals from the United States District Court
for the Southern District of Texas

CLERK'S OFFICE:

Pursuant to Local Rule 42.3, the appeal was duly entered dismissed for want of prosecution for failure of appellant to file a brief within the time fixed by the rules, this 9th day of July, 1990.

GILBERT F. GANUCHEAU
Clerk of the United States Court
of Appeals for the Fifth Circuit

BY: H. E. Adams, Jr. /s/
Deputy Clerk

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2928

U.S. COURT OF APPEALS
FILED
OCT 24 1989
GILBERT E. GANUCHEAU
CLERK

DAN M. LINKOUS,

Plaintiff-Appellant,

versus

HONORABLE THOMAS J. STOVALL,
ET. AL.,

Defendants-Appellees,

versus

JAMES M. MURPHY, Attorney

Appellant

Appeal from the United States District Court
for the Southern District of Texas

Before WILLIAMS, HIGGINBOTHAM, and SMITH,
Circuit Judges:

BY THE COURT:

IT IS ORDERED that the motion of appellee, Nancy Linkous, to dismiss the referenced appeal is DENIED. A motion made pursuant to Fed. R. Civ. P. 59(e) suspends the running of the time for filing notice of appeal, and hence renders premature a notice of appeal filed before a ruling

on the motion, but only if the motion is served within ten days of the entry of judgment. Harcon Barge Co. v. D&G Boat Rentals, Inc., 784 F.2d. 665 (5th Circ.) (en banc), cert. denied, 479 U.S. 930 (1986). Here, the judgment was entered on July 19, 1989. Hence, the plaintiff had until July 29 to serve a notice of appeal, but as July 29 was a Saturday, the deadline was July 31.

The record reflects that plaintiff's rule 59(e) motion for reconsideration was filed on August 1, but the record does not reflect when the same was served. Absent a showing that a motion was served timely so as to render plaintiff's notice of appeal premature, we deem the notice of appeal to be effective (since it was filed within thirty days from the date of judgment). We note, as well, that the motions for sanctions appear to have been served more than ten days after judgment and hence cannot affect the appealability of the judgment.

Our denial of the motion to dismiss the appeal is without prejudice to its renewal by any appellee upon a showing that the rule 59(e) motion was in fact served within ten days of judgment so as to render the notice of appeal premature. So ordered.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
JUL 18 1989
JESSE E. CLARK, CLERK
BY DEPUTY /s/

DAN M. LINKOUS,	§	
	§	
VS.	§	
	§	
DONN C FULLENWEIDER	§	
DON FOGO,	§	CIVIL ACTION NO. H-85-3676
NANCY L. LINKOUS, and	§	
THOMAS HENDERSON	§	
	§	

FINAL JUDGMENT

Pursuant to the Memorandum and Order signed on this day, severing and administratively closing Plaintiff's suit against Defendant Don Fogo and granting Defendants Thomas Henderson's, Donn Fullenweider's, and Nancy Linkous' motions for summary judgment, the Court

ORDERS that final judgment shall be entered for Defendants Henderson, Fullenweider, and Nancy Linkous and against Plaintiff.

DONE in Houston, Texas, this 18th day of July, 1989.

/s/
JAMES DeANDA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
JUL 19 1989
JESSE E. CLARK, CLERK
BY DEPUTY /s/

DAN M. LINKOUS,	§	
	§	
VS.	§	
	§	
	§	
DONN C FULLENWEIDER	§	
DON FOGO,	§	
NANCY L. LINKOUS, and	§	CIVIL ACTION NO. H-85-3676
THOMAS HENDERSON	§	
	§	

MEMORANDUM AND ORDER

Pending before the Court are Thomas Henderson's (Henderson's), Donn C. Fullenweider's (Fullenweider's) and Nancy Linkous' motions to dismiss Plaintiff's second amended complaint, or, in the alternative, for summary judgment. Also pending are Plaintiff's objections to the Magistrate's orders entered March 6, 1989, March 22, 1989, and June 15, 1989 and various motions regarding discovery disputes.

Plaintiff's remaining objections to the Magistrate's orders are also denied. The Magistrate had wide discretion to assure orderly discovery and his orders were not clearly erroneous. Accordingly, it is hereby,

ORDERED that Plaintiff's objections to the Magistrate's orders entered March 6, 1989, March 22, 1989, and June 15, 1989 are DENIED. It is further

ORDERED that instrument numbers 151, 153, and 164 are STRICKEN. Because Defendant Don Fogo is in bankruptcy, it is

ORDERED that Plaintiff's action against that Defendant is both SEVERED and ADMINISTRATIVELY CLOSED. It is further

ORDERED that Defendants Henderson's, Fullenweider's, and Nancy Linkous' motions for summary judgment are GRANTED. It is further

ORDERED that the discovery motions listed in footnote 2 above are MOOT.

Accordingly, this case is closed.

DONE in Houston, Texas, this 18th day of July, 1989.

/s/
JAMES DeANDA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
OCT 16 1987
JESSE E. CLARK, CLERK
BY DEPUTY /s/

DAN M. LINKOUS,	§	
Plaintiff	§	
	§	
VS.	§	
	§	
HONORABLE CHARLES	§	
DEAN HUCKABEE,	§	
JUDGE OF THE 247TH	§	
JUDICIAL DISTRICT	§	CIVIL ACTION NO. H-85-3676
COURT OF HARRIS	§	
COUNTY, TEXAS;	§	
HONORABLE ARTHUR C.	§	
LESHER, JUDGE;	§	
DONN C FULLENWEIDER	§	
DON FOGO;	§	
MURIEL FLAKE; and	§	
NANCY LINKOUS,	§	
Defendants	§	

MEMORANDUM AND ORDER

Pending before the Court are Defendant's Rule 12 motions to dismiss, Plaintiff's Rule 15(a) motion for leave to file second amended complaint, and Defendant Fullenweider's Rule 11 motion for sanctions

This case arose out of a divorce action between Plaintiff and his wife, Nancy Linkous, in the 247th Judicial District Court of Harris County, Texas. Donn C. Fullenweider was Nancy Linkous' attorney in state court. State District Court Judge Huckabee presided over the divorce case. In

November of 1983, when custody was at issue, presiding Judge Huckabee appointed Don Fogo to act as attorney ad litem for the Linkous children. In December of 1983, the Court appointed Muriel Flake, a non-clinical psychologist, to report . . .

. . . conduct to date. Plaintiff has consumed considerable judicial resources to rule on multiple frivolous and bad faith claims. This litigation is now narrowed to one issue and limited to a small number of defendants. Plaintiff is cautioned that continued abuse of judicial resources will only result in an increase in the amount of sanctions that will be ordered.

DONE in Houston, Texas, this 16th day of October, 1987.

/s/
JAMES DeANDA
UNITED STATES DISTRICT COURT

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

DAN M. LINKOUS,	§	**ENTERED**
Plaintiff	§	**AUG 18, 1989**
	§	**JESSE E. CLARK, CLERK**
VS.	§	**BY DEPUTY /s/**
	§	
HONORABLE CHARLES	§	
DEAN HUCKABEE,	§	
ET. AL.	§	CIVIL ACTION NO. H-85-3676

NOTICE OF APPEAL

Plaintiff, Dan M. Linkous, hereby gives notice of appeal of an order/orders from Judge James DeAnda of the U. S. District Court to the Fifth Circuit Court of Appeals of the United States. Plaintiff Linkous notices the district clerk of the U. S. District Court for the Southern District of Texas, Houston Division, to follow the Federal Rules of Appellate Procedure in regards to this notice of appeal of the above-captioned case H85-3676. Enclosed are the two orders as Exhibit "A" and "B" to be appealed.

This case was filed 6/26/85 as a 1983 civil rights suit which later added RICO acts and proceeded with appropriate amendments. This presiding court's Judge DeAnda severed out the 1983 civil rights suit and any charges and violations against judges for various reasons (Exhibit "A") and allowed only pursuance of the RICO actions of the

limited defendants. No appeal could be effected on the dismissal of the 1983 civil rights suit or the prosecution of the judges named as this would have been interlocutory and couldn't really be addressed until the entire case was ruled on. The discovery in this case has been obstructed and misrepresentations of the networking conspiracy has resulted in dismissal of the entire case, including the RICO claims. Plaintiff's attorney had, for various reasons, abandoned the case about two weeks before the final order of dismissal (Exhibit "B"). Plaintiff's attorney refuses to return Plaintiff his records in this and other cases he is attorney of record and refused communication the Plaintiff for nearly six weeks concerning this case or the other cases he is responsible for as a means of furtherance of the legal and judicial networking conspiracy to hide the facts of this case (and other related cases) to assure its ultimate demise and the riddance of a very sophisticated, intricately involved, and covert plot by racketeering influential legal and judicial figures who otherwise would be revealed as criminal conspirators. This activity by the extensive network is self-serving and done as a means of "cover up" of blatant illegalities by the very individuals this country entrusts its faith in obeying the law, assuring justice is served, and whom sanctioned with immunity violate not only their obligations and responsibilities to the electing populace and served constituents of this country but make mockery of the founding fathers' efforts to maintain a just, honest, and

proud judicial process for redressing average citizens wrongs perpetrated upon them. A complete record has been intentionally obstructed, denied Plaintiff, and refused development for fear of unraveling the schemes and plots by these numerous assistants of the "system" in this "cover up."

The case's final demise in this court was signed allegedly July 18, 1989, by Judge DeAnda and entered July 19, 1989, by the U. S. District Court Clerk's stamp on the "Final Judgment" (Exhibit B). Plaintiff, unable to get his counsel to communicate with him after weeks of daily phone calls and numerous mailgrams (and the legal and judicial system wonders why so many ardent litigants pursue their cases pro se) filed abandonment notice and dismissal of attorney for Plaintiff with notification of Plaintiff Linkous' intention to proceed pro se in order to preserve and protect his meritorious and just case for reconsideration and possibly ultimate appeal to the higher courts in hopes of receiving fair and just consideration there in the name of all that's fair, just, honest, and "right." This was filed August 1, 1989 . . .

Plaintiff wishes to take no chances with having his appeal forfeited by failure to file within 30 days his "notice of appeal" with technicalities precluding justice again . . .

. . . be filed by Plaintiff timely according to F.R.A.P. so his case may get "airing" at the higher court level with hopefully fair and unbiased (unexparted) consideration. . .

. . . The court and Plaintiff's past attorney in this case act in concert to deny Plaintiff a chance for appellate review of this most important and revealing case. The enterprise enlarges and the conspirators are rapidly recruited to "bury" this cases' facts and issues. Why so much fear over a fair hearing of this case? . . .

The major reason courts want attorneys to represent litigants is not for efficiency, competency, and orderliness of the judicial process but because they can "control" all attorneys (even to "deep six" their clients as advocates) to do what the power structure wants to generate fees and money for the legal-judicial monolithic "machine." Premeditated brain storming and think tanking by the "players" of the conspiracy has prostituted the American judicial process to the point that nearly every citizen is a cynic about it and has little or no respect for it. The system of justice empowers judges to be accountable to their country people who empower them, not to allow wholesale destruction, control, and corruption for the large law firms, financially secure and influential attorneys and businesses, and disregard for the average citizens' rights promulgated by our sacred U.S. constitution. This case deserves to be heard after appropriate discovery by honest, concerned, and conscionable citizens and/or judiciary. The money, time, effort, and belief in this case for five years should not be abused by cavalier dismissals of appeal, intimidation, threat, chill, denial of liberty and pursuit of happiness, abridgement of

one's access to the courts and numerous other tactics and unequal applications and enforcements, double standards, denial of community association, restraint of trade, and destruction/harm to the family are all the tools of the trade used here in this case culminating in this dismissal decision. . . .

. . . refused revelation by this premature, premeditated, arrogant, and disrespectful dismissal of this lawsuit. Plaintiff denied an appeal of his farcical divorce trial and decree, denied access to the state courts for several lawsuits and continued retention of Chapter 7 Bankruptcy for over five years to Plaintiff's detriment, along with personal and family and medical professional destruction is continuing its rationale in this federal court; similar treatment of U. S. District Court appeals or suits by Plaintiff indicates power-broking at its best. . . .

. . . Who is charged with the responsibility to say "enough?" Is it really one big money, power, ego, influence game with no concern for our tradition of justice and moral fiber? Is it the one who ends up with the most toys who really wins in the end? I don't believe so and like Diogenes looking for the honest man, I am continuing to believe in and use as created the system of justice, which becomes tainted by some of its "players" (but hopefully won't destroy us all) to redress the crimes committed against me, my

family, my property, my constitutional rights, and my belief in the larger purpose of life than this worldly display typified in this case.

Respectfully submitted,

/s/

Dan M. Linkous-Plaintiff
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838
Unwillingly pro se -
Abandoned by attorney
Downtrodden

APPENDIX I

Supreme Court of the United States

No. A-273

Dan M. Linkous,

Petitioner

v.

Thomas J. Stovall, et al.

ORDER

UPON consideration of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including November 13, 1990.

/s/ Byron R. White
Associate Justice of the Supreme Court of the United States

Dated this 10th day of October, 1990

APPENDIX J

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

May 31, 1990

Mr. Dan M. Linkous
1526 Kingwood Drive
Kingwood, TX 77339

No. 89-2928 Danny M. Linkous v.
Hon. Thomas J. Stovall

Dear Sir:

Receipt is acknowledged of your letter dated May 18, 1990 in regards to corrections to the transcript, etc. This is to advise that we have marked our docket to show that same will be sent to the administrative panel and screening judge of this Court for further consideration.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: /s/
Rosalie C. Varino
Case Manager

RCV:lmc

APPENDIX K

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

April 13, 1990

Mr. Dan M. Linkous
1526 Kingwood Drive
Kingwood, TX 77339

No. 89-2928 LINKOUS -vs- STOVALL ET. AL. -vs- MURPHY

Briefing Notice. Pursuant to FRAP 12 you are hereby notified that the record on appeal has been filed. The brief for appellant and record excerpts are not due within forty (40) days from this date. Enclosed is a checklist of rule requirements for preparation and filing of briefs and record excerpts.

Policy on Extensions. . . . where extensions are requested they are . . . given . . . only for good cause. . . . Failure to have access to the record will not be considered rounds for extending the time. Whether opposing counsel does not object has no bearing on our determination to grant an extension. . . .

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: /s/
Deputy Clerk

P.S. The record on appeal is being retained in the District Court. Partial Record on appeal has been filed on this date.

APPENDIX L

5/12/90

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAN M. LINKOUS,	§	U.S.D.C. Case No. 85-3676
Plaintiff	§	
	§	ON APPEAL AS
VS.	§	
	§	CASE NO. 89-2898
THOMAS STOVALL,	§	(FIFTH CIRCUIT)
ET. AL.,	§	
Defendants	§	

Plaintiff and Appellant Linkous' Request of the Clerk of this U.S. District Court to Transmit Record . . . to the 5th Circuit Court of Appeals of Case 85-3676 on Appeal as Case 89-2898

To the U. S. District Court Clerk and Court Presiding:

COMES NOW, DAN M. LINKOUS, Plaintiff and Appellant in the above-captioned matter and requests . . . transmit the transcript . . . to the Fifth Circuit Court of Appeals for its consideration on the appeal of this matter by the court . . . and also for its transmission to Plaintiff Linkous to utilize in the preparation and submission of Appellant's brief.

. . . Plaintiff timely paid the appeal fee, designated the record, requested transmission of the . . . file by the U. S. District Court to the Fifth Circuit Court of Appeals, . . .

. . . Plaintiff requests that the Clerk of this U. S. District Court inform him as soon as practicable if there is some problem or reason for delay in this matter;. . .

Respectfully submitted,

/s/

Dan M. Linkous
Plaintiff and Appellant
pro se, unwillingly
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838

APPENDIX M

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

May 23, 1990

To: Dan M. Linkous

No. 89-2928 - Linkous v. Stovall
(DC No. CA-H-85-3676)

In regards to the case identified above, the following motion has been filed:

MOTION OF APPELLANT, DAN M. LINKOUS, FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF

This motion will be presented for ruling without oral argument on this date:

MAY 30, 1990

. . . The date shown above indicates when the matter will be forwarded for ruling and does not mean that any action will be completed by then. . .

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By: /s/
Deputy Clerk

APPENDIX N

6/1/90

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DAN M. LINKOUS, Plaintiff-Appellant	§	
	§	Case No. 89-2928
vs.	§	
THOMAS J. STOVALL, ET. AL., Defendant-Appellee	§	

PLAINTIFF AND APPELLANT LINKOUS' RESPONSE TO ATTORNEY OLD'S "OBJECTION" TO APPELLANT LINKOUS' REQUEST FOR EXTENSION OF TIME TO FILE APPELLANT'S BRIEF"

COMES NOW, DAN M. LINKOUS . . .

I.

Judge James DeAnda entered an order 03-22-90, which was post judgement," after the "Notice of Appeal" had been filed and perfected by Plaintiff and Appellant Linkous, rendering his jurisdiction void in this matter. Judge DeAnda continued to entertain motions and rule on them subsequent to this filing of "Notice of Appeal" by Plaintiff and Appellant Linkous. . . so that Plaintiff and Appellant Linkous can be essentially denied access to the courts . . . DeAnda . . . in his 05-25-90 entered order, denies attorney Long's motion for reimbursement of expenses and sanctions against Plaintiff . . . denied "Plaintiff's Motion to Show Authority" . . . "the court simply notes that it has ruled on

all pending post judgment motions at the request of the Court of Appeals." . . . Appellant Linkous contends that he has not received nay such order from the Fifth Circuit Court of Appeals conferring this responsibility upon judge DeAnda in this matter. . . .

II.

. . . Fifth Circuit Court of Appeals . . . denied Defendant's request for sanctions and attorney fees as not timely filed from the entry of the "Final Judgment" . . . They misrepresent . . . aspects of this case to essentially "make it easy" for them to dismiss this case at will. . . . This honorable body is too knowledgeable and wise to be unduly influenced by such tactics and maneuvers . . . in matters involving powerful, influence peddling individuals or very wealthy bureaucratic individuals, especially if they are attorneys or some judges, . . . The real crime is the perjurious affidavit by Nancy Linkous and the false statements of her impoverished state resulting in the appointment, at the taxpayers' expense, by Judge Botley and DeAnda, of one of the largest and certainly one of the most powerful law firms in the United States, Andrews-Kurth, to represent her . . . these same powerful, large number of influential attorneys representing these Defendants . . .preclude Appellant Linkous . . . "complete and full" opportunity to review the original file . . . and . . . a sufficient time subsequent to prepare his Appellant's brief . . .

III.

. . . ninety days . . . subsequent to this filing by Appellant Linkous of his "Extension of Time" the Internal Revenue Service came to his office and illegally seized all of the assets and documents in his office of medal and legal and personal nature. . . . after two district court appearances . . . the I.R.S. admitted that they "made a mistake," and returned all of these assets. . . . use of the I.R.S. by these "power-brokers and influence-peddlers" in the legal and judicial community to further harass and obstruct Plaintiff and Appellant Linkous' ability to be able to prepare, fully and completely, adequately have access to the documents, and be able to submit his Appellant's brief so that it could be heard on its merits. . . .

WHEREFORE, . . . Appellant, Dan M. Linkous, prays . . . this court grant "Plaintiff's Request for Extension of Time," . . . allow Plaintiff and Appellant Linkous to have the original file sent to him . . . to fully and adequately prepare to submit his Appellant's brief. . . .

Respectfully submitted,

/s/

Dan M. Linkous
Plaintiff and Appellant
pro se, unwillingly
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
(713) 358-6838

APPENDIX O

6/18/90

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
AT NEW ORLEANS

No. 89-2928

DAN M. LINKOUS,
Plaintiff-Appellant,

v.

HON. THOMAS J. STOVALL, et. al,
Defendants-Appellee.

APPELLANT'S MOTION FOR REHEARING BY THE FULL THREE-JUDGE PANEL, TO REINSTATE THE APPEAL, TO USE THE FULL RECORD FOR PREPARATION OF THE BRIEF AND RECORD EXCERPTS, AND FOR A FULL APPELLANT'S BRIEFING PERIOD PURSUANT TO RULE 31(a), FRAP

DIRECT APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION DISTRICT COURT NUMBER CA-H-85-3676

DAN M. LINKOUS
PLAINTIFF-APPELLANT, pro se
1526 Kingwood Drive
Kingwood, Texas 77339
(713) 358-6838

SUGGESTION TO DISQUALIFY JUDGE JERRY SMITH TO CONSIDER THIS APPEAL UNDER U.S.C. § 455

Appellant is . . . witness for Mr. Bouchard's family . . . in a huge wrongful death law suit against the City of Houston . . . Texas. . . .

Mr. Bouchard died without medical evaluation or attention in the custody of the City of Houston . . . Appellant had been Mr. Bouchard's personal physician . . . At the time of Mr. Bouchard's death, Judge Jerry Smith was City Attorney for the City of Houston and supervised the City's defense of this case for 2-3 years. . . . Judge Smith still has close ties with and interests in this case and . . . close ties and interests with his former law firm—chief sponsor and endorser—Fulbright and Jaworski . . . who represent the key racketeering defendants—Henderson and Sheinfeld, Maley, and Kay, et. al. . . .

Judge Smith's unusually harsh personal individual effective dismissal of this case through his denial of extension of time to file Appellant's Brief . . . personal and professional bias against Appellant . . . interests in favor of the powerful defendants' position in both this case and in the Bouchard case.

Chief Assistant Clerk Windhorst and Case Manager Varino both . . . stated . . . extension of time was "no problem" and "commonplace" in an extensive and expensive

case concerning such extremely complex significant issues such as this case.

. . . Ms. Varino had advised Appellant that he was clearly entitled to another briefing schedule after receipt of the record from the district court.

. . . suggests that Judge Jerry Smith is disqualified from further participation in the appeal of this case under the provisions of 28 U.S.C. §§ 455(a), (b)(5)(iii), and (c).

/s/
Dan M. Linkous, Appellant

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ISSUE: WHETHER THE CLERK OF THE COURT OF APPEALS PREMATURELY ISSUED THE INITIAL APPELLANT'S BRIEFING SCHEDULE PRIOR TO TRANSMISSION OF THE RECORD TO THE COURT OF APPEALS AND/OR WITHOUT PROPERLY AUTHORIZED AND JUSTIFIED EXCEPTIONS TO THE COMPLETION AND TRANSMISSION OF THE FULL RECORD 1

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§ 226.02[2] 8

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
AT NEW ORLEANS

No. 89-2928

DAN M. LINKOUS,
Plaintiff-Appellant,

v.

HON. THOMAS J. STOVALL, et. al,
Defendants-Appellee.

APPELLANT'S MOTION FOR REHEARING BY THE FULL THREE-JUDGE PANEL, TO REINSTATE THE APPEAL, TO USE THE FULL RECORD FOR PREPARATION OF THE BRIEF AND RECORD EXCERPTS, AND FOR A FULL APPELLANT'S BRIEFING PERIOD PURSUANT TO RULE 31(a), FRAP

SUMMARY OF THE ARGUMENT

After the notice of appeal was filed on about 18 August 1989 and docketed, district court failed and refused for about ten (10) months to compile and transmit the record of the case to the court of appeals as required by Rule 11, FRAP. During this period of extensive exparte and deceptive maneuvering and probing, on about 13 April 1990, the clerk of the court of appeals, in violation of Rules 11 and

12, FRAP, improperly issued an unauthorized premature appellant's briefing schedule before the record was transmitted to or filed in the court of appeals.

Mr. Windhorst and Ms. Varino have admitted to appellant that the briefing schedule was improperly issued, but suggested appellant was required to seek and extension of time to file his appellant's brief in order to preserve his appeal. Judge Jerry Smith, in a single judge order, denied an extension of time and effectively terminated appellant's appeal while the district court was still carrying on obstructive post judgment motion commotion and withholding the case file from appellant in his district court chambers.

Appellant now believes, based on recent communications with Mr. Windhorst, Ms. Varino, and Ms. Davenport that the record is now released by Judge DeAnda for compilation and transmission to the court of appeals. When the complete record is received by the Court of Appeals, a new briefing schedule should be issued and the record should be forwarded to appellant for use in preparing his brief.

ARGUMENT

"The steps in the assembly, transmission, and filing of the record are governed by Rules 10, 11, and 12." 9 Moore's Federal Practice, § 210.03, p. 10-11(3/80).

Rule 10(a), FRAP, defines the composition of the record on appeal as follows:

> The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certi-

> fied copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

Appellant has repeatedly urged that the entire case file be included in the record on appeal.

Rule 10(b), FRAP, prescribes the duty of appellant to order the transcript of hearings form the court reporters. IN spite of repeated intentional crucial alterations to omissions in and obstructions to the completion of appellant's transcript orders, the final transcript correction was provided to and filed in the court of appeals on about 31 May 1990. (Exhibit "A"). The district court and the official court reporter have repeatedly ignored directives and pleas of the court of appeals to advise of the status and to provide transcripts to complete the appellate record.

In addition to these delays in completion of the transcripts, the district court and its clerk repeatedly obstructed and delayed completion of the record while they orchestrated a symphony of harassing tardy frivolous post judgment motions by the powerful defendants and their unprincipled mercenaries. The district court appears to have finally stopped its interference and obstruction of completion of the record by its order entered 25 May 1990, only eleven (11) days before entry of Judge Smith's order denying extension of time to obtain access to the record and to prepare and file appellant's brief.

In accordance with the foregoing, it appears that the district court record for this appeal was finally complete,

but still retained, without formal authority, by the clerk of the district court, on 25 May 1990, the date of entry of Judge DeAnda's final post judgment order. Appellant believes that the entire original case file, unbound and not consecutively page numbered, was held by the district court and clerk until at least 12 June 1990 when Appellant discussed this matter with deputy clerk Joan Davenport and Case Manger Rosalie Varino. Fifth Circuit Local Rule 10.2 prescribes the form of the record to be bound and pages numbered consecutively by the clerk of the district court before transmission to the court of appeals.

Rule 11(a), FRAP, prescribes the duties of Appellant for transmission of the record to the court of appeals. As outlined hereinabove, Appellant has diligently and fully complied with, in spite of onerous interferences and obstructions, his duties "to enable the clerk to assemble and transmit the record." Appellant had repeatedly urged that the record include the entire case file.

Even the intimidated, manipulated court reporter has finally minimally completed her duties to redo and complete the transcripts pursuant to Rule 11(b), FRAP.

Now that the transcripts are complete, only the clerks of the district court and/or of the court of appeals are errant prescribed administrative duties under Rules 11 and 12, FRAP.

The clerk of the district court has never prepared and transmitted the record to the clerk of the court of appeals

as required by Rule 11(b). These derelictions are also direct violations of Fifth Circuit Rules 11.1 and 11.2 which appear to attempt to restate and amplify the duties of the district judge, his court reporter, and his clerk in these specific circumstances.

The exceptions, provided by the FRAP, to the clerk of the district court's duty to transmit the record to the court of appeals have not been properly invoked.

1) Rule 11(c) requires stipulations by the parties or motion of any party and order by the district court for retention of the record for use by the parties in preparing appellate papers. No due process stipulation, motion, nor order has been filed to authorize the clerk of the district court to so certify to the court of appeals. In fact, the district court has been withholding the case file in his office to prohibit access by appellant and by the deputy district clerks of the district court file room.

2) No order of the court of appeals to transmit a certified copy of the docket entries in lieu of entire record has been filed or provided to Appellant pursuant to Rule 11(e).

3) No due process order of the district court for retention of the record "for use there pending the appeal" has been filed or noticed to appellant. No such order has been transmitted to the court of appeals nor to appellant as required by Rule 11(e).

> When an appeal is taken from a final judgment that disposes of the entire action below, the record is no longer needed in the district court and there is no in-

convenience attendant upon its transmission as the record of appeal. 9 Moore's Federal Practice, § 211.12[2], p.11-40(3/80).

4) No written stipulation of the parties to retain any parts of the record in the district court has been executed or filed as required by Rule 11(f).

5) Appellant has repeatedly requested to the clerks of the district and appeals courts that the entire record be transmitted for use by appellant for all motion and briefing requirements. These requests forego any contrary exceptions that could be implied from Rule 11(g).

Accordingly, until the entire record is page numbered consecutively, transmitted to the court of appeals to preclude further obstruction, interferences, and alteration and made available to appellant for orderly auditing, referencing, and copying; appellant is unreasonably prevented and obstructed from any semblance of equal, fair, meaningful briefing and record excepting.

Rule 12, FRAP, sets forth the duties of the clerk of the court of appeals to properly establish the briefing schedule.

Rule 12(b) establishes the next check-point in the briefing schedule sequence. Since the record has never been transmitted pursuant to Rule 11, the clerk of the court of appeals has never been authorized under the rules to file the record and initiate appellant's briefing schedule pursuant to Rule 31, FRAP.

Here is the crucial error in these proceedings—the execution of the unauthorized premature briefing schedule

notice (Exhibit "B") [seemingly invited and then issued under very questionable circumstances by the clerk of the court of appeals (Exhibit "C")] before the record or any legitimate orders excepting transmission of the entire record were filed with the court of appeals. Also see the vague, cryptic related transmittals by deputy clerk Joan Davenport (Exhibits "D" and "E") which are not authorized by any court order, as required by Rule 11. It is grossly unjust and unconscionable to effectively dismiss appellant's entire appeal due to the clerk's intentional and/or negligent maladministration and dereliction or clearly prescribed and routinely applied rules, duties, customs, and practices of the court of appeals and its clerk.

> Rule 11, as amended in 1979, imposes no duty on the appellant to see that the record is transmitted within any fixed time and eliminates all motions for extension of time for transmission. The transmission of the record under the amended rule is the clerk's work and dereliction in prompt transmission purely a matter of judicial administration. 9 Moore's Federal Practice § 211.05, p.11-18(3/80).

The crucial intentional or negligent error in this appeal is the clerk of the court of appeals' fraudulent notice of receipt of and filing "of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or (g), or the clerk's certificate under Rule 11(c)" and thereby the triggering of appellant's briefing schedule under Rule 31(a), FRAP. No such prescribed record, partial record, nor certificate had yet been transmitted to nor received by the clerk of the court of appeals

and therefore the predicate requirements for start of the appellant's briefing schedule have never been met.

To deprive appellant of his right to appeal this extremely controversial case under the foregoing circumstances of total laxity and probably malice by the clerks of the district and appeals courts in light of these courts' general policy, practice, and custom to grant liberal extensions of time to prepare and file appellate briefs is an extremely harsh and unreasonable prejudice and bias against appellant.

> The want of published decisions on the subject suggests that extensions of time requested before the time has run are granted with a much more generous hand; and occasional observations in the decisions verify this suggestion. F.N. 11: See. e.g., Business Forms Finishing Service, Inc. v. Carson, 463 F.2d. 966 (7th Circ. 1971). in which the appeal was dismissed for failure to file a brief within the eleventh extension of time, perhaps an unusual example of tolerance. 9 Moore's Federal Practice, § 226.02[2], p.26-7(3/80).

It is, accordingly, the duty of the court of appeals to compel the clerk of the district court to prepare and transmit the entire record to the court of appeals so that the normal briefing procedure can be followed.

CONCLUSION

Appellant requests

1) That the Court reinstate the appeal of this cause in all respects;

2) That the clerk of the court of appeals be required to obtain and file the entire district court case file and record, including all transcripts and exhibits;

3) That upon determining that the entire record has been transmitted to and filed in the court of appeals, a new briefing be issued to appellant by the clerk of the court of appeals; and

4) That upon initiation of appellant's briefing schedule the entire record be shipped to appellant for copying and use in preparing the brief and the record excerpts.

Respectfully submitted,

/s/
Dan M. Linkous
Plaintiff-Appellant, pro se
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838

APPENDIX P

1st Letter

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

January 29, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CA-H-85-3676
DAN M. LINKOUS vs DONN C. FULLENWEIDER, ET AL.

(COURT OF APPEALS #89-2928)

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

XXX Motion(s) pending.

CC: June Canulla

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX Q

2nd Letter

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

February 23, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CA-H-85-3676
DAN M. LINKOUS vs DONN C. FULLENWEIDER, ET AL.

(COURT OF APPEALS #89-2928)

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

XXX Motion(s) pending.

CC: June Canulla

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX R

THIRD LETTER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

OFFICE OF THE CLERK

March 19, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CCA 89-2928
CA-H-85-3676
DAN M. LINKOUS vs DONN C. FULLENWEIDER, ET. AL.

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

XXX Motion(s) pending.

CC: June Canulla

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX S

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

March 27, 1990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
MAR 29 1990
JESSE E. CLARK, CLERK

Mr. Jesse E. Clark, Clerk
United States District Court
515 Rusk Avenue, Room 5300
Houston, TX 77002

No. 89-2928 - Linkous vs. Stovall, et. al.

USDC# CA-H-85-3676

X It would appear from information available to us that the record should be complete for the purposes of this appeal. We would appreciate your now forwarding the record "forthwith," pursuant to FRAP 11. ***(Partial Record)***

Very truly yours,

GILBERT F. GANUCHEAU, CLERK

BY: /s/
Deputy Clerk

APPENDIX T

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

April 6, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CCA 89-2928
CA-H-85-3676 LINKOUS vs FULLENWEIDER

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

X Motion(s) pending.

3-21-90 Motion for Reimbursement of Fees & Expenses for Sanctions against Plaintiff.

X Copy of the docket sheet attached. Previous pending motions ruled on 3-22-90.

cc: Case Manager to Judge DeAnda

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX U

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

April 11, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CA-H-85-3676
CCA# 89-2928
LINKOUS vs FULLENWEIDER, ET AL.

Dear Sir:

In connection with this appeal, the following documents are transmitted.

X Other: Partial Record *Per your request*

Very truly yours,

/s/
Deputy Clerk

APPENDIX V

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

April 13, 1990

Mr. Dan M. Linkous
1526 Kingwood Drive
Kingwood, TX 77339

No. 89-2928 LINKOUS -vs- STOVALL ET. AL. -vs- MURPHY

Briefing Notice. Pursuant to FRAP 12 you are hereby notified that the record on appeal has been filed. The brief for appellant and record excerpts are not due within forty (40) days from this date. Enclosed is a checklist of rule requirements for preparation and filing of briefs and record excerpts.

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk

By: /s/
Deputy Clerk

P.S. The record on appeal is being retained in the District Court. Partial Record on appeal has been filed on this date.

APPENDIX W

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

OFFICE OF THE CLERK

April 20, 1990

Mr. Gilbert F. Ganucheau, Clerk

In re: CA-H-85-3676
CCA# 89-2928
LINKOUS vs FULLENWEIDER, ET AL.

Dear Sir:

In connection with this appeal, the following documents are transmitted.

X Other: Partial Record on appeal "per your letter"

Very truly yours,

/s/
Deputy Clerk

APPENDIX X

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

April 30, 1990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
MAY 3 1990
JESSE E. CLARK, CLERK

Mr. Jesse E. Clark, Clerk
United States District Court
515 Rusk Avenue, Room 5300
Houston, TX 77002

No. 89-2928 - Linkous vs. Stovall, et. al.

USDC# CA-H-85-3676

X It would appear from information available to us that the record should be complete for the purposes of this appeal. We would appreciate your now forwarding the record "forthwith," pursuant to FRAP 11. ***(Partial Record)***

Very truly yours,

GILBERT F. GANUCHEAU, CLERK

BY: /s/
Deputy Clerk

Record cannot go
MTNS pending
RV ntfd - 5-4-90

APPENDIX Y

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

May 21, 1990

Mr. Gilbert F. Ganucheau, Clerk
In re: CCA 89-2928
CA-H-85-3676 LINKOUS vs STOVALL ET AL

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

We request an extension of fifteen (15) days to resolve the deficiency and transmit the record.

X Motion(s) pending.

3-21-90 MOTION FOR REIMBURSEMENT OF FEES (CHARLES E. LONG)

5-16-90 Pltf. & Appellant LINKOUS request of the Clerk of DC to transmit record and to supplement etc.

X Copy of the docket sheet attached. Previous pending motions ruled on 3-22-90.

cc: Case Manager for Judge DeAnda

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX Z

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

May 31, 1990

Mr. Dan M. Linkous
1526 Kingwood Drive
Kingwood, TX 77339

No. 89-2928 Danny M. Linkous v.
Hon. Thomas J. Stovall

Dear Sir:

Receipt is acknowledged of your letter dated May 18, 1990 in regards to corrections to the transcript, etc. This is to advise that we have marked our docket to show that same will be sent to the administrative panel and screening judge of this Court for further consideration.

Very truly yours,

GILBERT F. GANUCHEAU,
Clerk

By: /s/
Rosalie C. Varino
Case Manager

RCV:lmc

APPENDIX AA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

July 2, 1990

Mr. Gilbert F. Ganucheau, Clerk
In re: CA-H-85-3676

DAN LINKOUS vs HONORABLE THOMAS STOVALL, ET AL

(COURT OF APPEALS #89-2928)

Dear Sir:

This is your notification pursuant to local rule 11.2 advising the Clerk of your Court for the reason for delay in the above mentioned appeal.

XXX The record is incomplete in this Court at this time.

Very truly yours,

Jesse E. Clark
Clerk

By: /s/
Deputy Clerk

APPENDIX AB

CASE NO. 85-3676
FILING DATE: 6/28/85
JUDGE NO.: J4116
48201 JAMES DeANDA

STATISTICALLY CLOSED 7-19-89

PLAINTIFFS	DEFENDANTS
Dan M. Linkous	1. ~~Thomas J. Stovall, Judge of the Second Administrative Judicial District~~ Dism 8-10-88
	2. ~~Dean Huckabee, Judge of the 247th Judicial District Court~~ Dism 10-16-87
	3. ~~Arthur C. Lesher, Judge~~ Dism 10-16-87
	4. Donn C. Fullenweider
	5. ~~Don Fogo~~ Stat. Closed 7-19-89
	6. ~~Muriel Flake~~ Dism 7-6-89
	7. Nancy L. Linkous
	8. Thomas Henderson

CAUSE

Right to Due Process of Law in Connection for a State Court Custody Suit 42 U.S.C. 1983 & 29 U.S.C. §§ 2201 & 2202

ATTORNEYS

PLTF
Dan M. Linkous, M.D.
1526 Kingwood Drive
Kingwood, TX 77339
713/358-6838

DEFT #6
Brian M. Chandler
HIRSCH, GLOVER,
ROBINSON & SHEINESS
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Houston, TX 77002
224-8941

DEFT #5
~~Donald Peter Fogo~~
~~1112 South Richey~~
~~Pasadena, TX 77506~~
~~472-1107~~

PLTF (Original Past Attorney)
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Dallas, TX 75214
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Houston, TX 77010
(713) 651-7703

~~Robert Saunders~~
~~2200 North Loop West,~~
~~Suite 1000~~
~~Houston, TX 77018~~

Atty for Nancy Linkous
William E. Junell, Jr.
ANDREWS AND KURTH
4200 Tx Commerce Tower
Houston, TX 77002

DEFT #4
Warren Taylor
FLOYD, TAYLOR & RILEY
1301 McKinney, #3440
Houston, TX 77010
(713) 655-8414

Charles Long
7100 Tx Commerce Tower
Houston, TX 77002

DATE	NR.	JAMES DeANDA PROCEEDINGS H-85-3676
6-28-85	1	ORIGINAL COMPLAINT, filed.
7-17-85		SUMMONS (7) issued.
8-6-85	9	ANSWER of deft Arthur C. Lesher, Filed.8-12-85
8-8-85	11	Defts, Stovall, Huckabee, and Lesher's MOTION TO DISMISS, filed. 8-14-85
8-8-85	15	Deft Linkous' MOTION TO DISMISS, filed. 8-14-85
8-12-85	16	Deft Fullenweider's MOTION TO DISMISS, filed. 8-14-85
8-16-85	18	Deft Flake's MOTION TO DISMISS, filed8-19-85
8-16-85	20	Deft Donald Peter Fogo's MOTION TO DISMISS, filed. 8-19-85
9-4-85	21	(JDA) ORDER setting PT & Motion conf. Oct. 23, 1985
10-16-85	23	Pltf's RESPONSE to the Motions to Dismiss of Defts 10-18-85
10-23-85	26	(JDA) PRETRIAL/MOTION CONFERENCE ORDER. 10-24-85
11-12-85	27	Pltf AMENDED COMPLAINT, filed. 11-15-85
7/30/86		Rec'd Pltf's SECOND AMENDED COMPLAINT 8-1-86
10-8-86	39	(JDA) ORDER setting conf on all pending matters Conf set Dec. 10, 1986
12-8-86 CELED	46	(JDA) ORDER, filed. Conf for 12-10-86 CAN- RESET for Feb. 25, 1987

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

2-18-87 48 (JDA) ORDER, filed. Pretrial conf. scheduled for 2-25-87 is CANCELED.

8-10-87 50 Pltf's MOTION FOR LEAVE TO PROCEED WITH DISCOVERY, filed. 8-11-87

10-16-87 52 (JDA) ORDER, filed.
Memorandum and Order. All claims against Defts Kenyon Huckabee and Lesher are DISMISSED. All motions to dismiss all claims contained in Pltf's amended complaint are GRANTED. Pltf granted leave until Nov. 10, 87 to file second amended complaint presenting only RICO cause of action. Court DEFERS ruling on Deft's motion for sanctions. 10-20-87

11-10-87 54 Pltf's SECOND AMENDED COMPLAINT, filed. 11-13-87

12-23-87 55 (JDA) ORDER, filed. Parties named in Pltf's second amended complaint ORDERED to appear for scheduling conf on Feb. 3, 88.

2-3-88 56 (JDA) ORDER, filed. Scheduling Order entered:
PTO Nov. 10, 88
Jury Trial Dec. 12, 88

3-15-88 59 Joint STATUS REPORT, filed. 5-4-88

5-19-88 61 (JDA) ORDER, filed.
Conference on all pending matters set
Motions Jun 15, 88
Responses Jul 5, 88
Conf set Jul 20, 88

6-14-88 64 (JDA) ORDER, filed.
Jul 20, 88 conf RESET for Aug 10, 88, 2:30 PM

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

6-14-88 Pltf's NOTICE OF INTENTION TO TAKE ORAL DEPOSITIONS

6-21-88 73 Movants . . . MOTION FOR PROTECTIVE ORDER, filed.

6-21-88 74 Deft MOTION TO QUASH DEPOSITIONS

6-22-88 Pltf's NOTICE OF INTENTION TO TAKE ORAL DEPOSITIONS

7-1-88 Pltf's NOTICE OF INTENTION TO TAKE ORAL DEPOSITIONS

7-1-88 117 Movants AMENDED MOTION FOR PROTECTIVE ORDER

7-11-88 120 (JDA) ORDER Case set for conf Aug 10, 88

7-11-88 121 (JDA) ORDER Discovery STAYED until after the Aug 10, 88 conference.

7-14-88 122 Pltf's MOTION FOR SANCTIONS FOR FAILURE TO MAKE OR COOPERATE IN DISCOVERY

7-14-88 123 Pltf's MOTION FOR CONTEMPT AND SANCTIONS

7-14-88 125 Pltf's REQUEST FOR HEARING.

7-28-88 129 Pltf's MOTION TO EXTEND DISCOVERY.

8-2-88 130 (JDA) ORDER Deft counsel's motion to substitute is GRANTED.

8-10-88 131 (JDA) ORDER, Motion to dismiss Deft Stovall is GRANTED.

DATE	NR.	PROCEEDINGS	H-85-3676
8-10-88	133	(JDA) PRETRIAL/MOTION CONF ORDER, . . . Huckabee's mtn for protective order granted. . . . takes under advisement . . . protective orders . . . all depositions will be taken under the supervision of the Honorable Botley.	
8-17-88	134	Pltf's AMENDED MOTION TO EXTEND DISCOVERY.	
8-27-88	138	Transcript of proceedings August 10, 1988 before James DeAnda, filed.	
12-8-88	142	(JDA) ORDER, 12-12-88 Trial is Canceled. discovery . . . and supervision of depositions are referred to Magistrate Botley for disposition prior to 2-15-88.	
1-27-89	143	(CB) MOTION HEARING MINUTES, Motions heard - Judge will confer w/ Judge DeAnda.	
3-2-89	148	(CB) ORDER, Pltf shall within ten(10) days pay the Court Reporter ($5,587.50) for the deposition transcripts.	
3-6-89	149	(CB) MEMORANDUM AND ORDER, Deponents Motion for protective order is GRANTED. Pltf shall deposit in the registry of the court five hundred dollars . . . for each deposition prior to deposing the designated deponent. . . . pretrial order shall be filed on or before April 14, 1989.	
3-16-89	150	Pltf's Objections to Magistrate's Order	
3-22-89	152	(CB) ORDER . . . Joint PT-Order shall be filed no later than May 1, 1989.	
4-4-89	161	Pltf's OBJECTIONS TO MAGISTRATE'S ORDER.	

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

4-6-89 163 Fullenweider's MOTION FOR PROTECTIVE ORDER.

4-20-89 170 Pltf's REQUEST FOR EXTENSION OF TIME for Adequate Discovery.

4-21-89 171 (CB) ORDER . . . Deft Fullenweider's Motion for Protective Order . . . is GRANTED. . . . . hearing of Apr 20, 1989, will be continued and heard on Jun 5, 1989 . . .

5-12-89 185 Pltf's OBJECTION to the Appointment of Counsel . . . to Deft Nancy Linkous and for Protection with Respect to Financial Affidavit.

5-12-89 Pltf's NOTICE of Oral Deposition.

5-18-89 200 (CB) ORDER . . .

5-22-89 202 (CB) ORDER Appointing Counsel . . . Warren G. King . . . is appointed to represent Deft Nancy Linkous. Court finds that (from the financial affidavit of Nancy Linkous), that she does not possess sufficient finances at present to employ counsel . . .

5-22-89 203 Defts MOTION FOR PROTECTION.

5-31-89 208 (CB) ORDER . . . Court's Order of May 18, 1989, appointing Warren G. King to represent Nancy Linkous is hereby RESCINDED.

5-31-89 209 (CB) ORDER Appointing Counsel . . . Order, that William E. Junell, Jr. of Andrews and Kurth Law Firm, is appointed pursuant to 28 U.S.C. §1915(d) to represent Deft Nancy Linkous.

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

5-30-89 210 Pltf's MOTION to Extend Discovery and for Trial Continuance.

5-30-89 212 Pltf's MOTION to Compel and for Sanctions

5-30-89 213 Pltf's MOTION for Contempt for Failure to Obey Deposition Subpoena.

6-5-89 218 (CB) MOTION hearing . . . Trial to commence.

6-14-892221 Deft's MOTION for Protective Order.

6-15-89 223 (CB) ORDER . . . Fullenweider's objections to Pltf's Request for Production . . . are SUSTAINED. Such documents are privileged and not discoverable. . . .

6-15-89 224 (CB) ORDER . . . Henderson's Motion for Protection GRANTED . . . Pltf Motion to Extend Discovery and for Trial Continuance DENIED.

6-15-89 225 (CB) ORDER . . . Pltf's Motion for Leave to File Third Amended . . . Complaint . . . DENIED.

6-15-89 227 Deft NOTICE OF ORAL DEPOSITION of Dan M. Linkous.

6-16-89 234 Pltf's Motion for Rule 11 Sanctions against Thomas Godbold and Deft Thomas Henderson.

6-16-89 236 Pltf's Motion for Rule 11 Sanctions against Ms. Barbara Hilburn and Deft. Donn C. Fullenweider.

6-18-89 245 (CB) ORDER . . . Pltf's Motions to Deem Facts Admitted . . . DENIED. . . . Pltf's Motion for Sanctions . . . DENIED.

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

6-30-89 249 Joint Pre-Trial Order, filed.

7-14-89 256 (JDA) ORDER . . . ORDERED that Jury selection set for July 11, 1989 is CANCELED.

7-19-89 258 (JDA) MEMORANDUM AND ORDER . . . Pltf's objections to Magistrate's orders . . . DENIED. Pltf Fogo's Instrument numbers . . . STRICKEN and ADMINISTRATIVELY CLOSED. Defts . . . motions for summary judgment are GRANTED.

7-19-89 259 (JDA) FINAL JUDGMENT . . . Final judgment entered for Defts Henderson, Fullenweider, and Nancy Linkous and against Pltf. All costs are taxed against Pltf.

8-1-89 260 Pltf's NOTICE OF ABANDONMENT of case by J. Murphy . . . assignment of Pltf D.M. Linkous, as representative pro se in this matter . . .

8-10-89 262 Deft's MOTION FOR THE IMPOSITION OF SANCTIONS upon Pltf. D.M. Linkous & his atty, J.M. Murphy, filed 8-16-89

8-18-89276 Pltf's, Dan Linkous, NOTICE OF APPEAL, dkt'd 9-15-89

9-28-89 280 Plaintiff's Request of this Court to Demand Attorney James Murphy to Immediately Turn Over all Legal Records . . . Involving Plaintiff's Case

9-28-89 Filing and Docketing fees paid $105.00, #333457, reference entry no. 276.

9-29-89 282 Pltf, Dan Linkous, DESIGNATION OF RECORD.

(JDA) CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
DAN M. LINKOUS	HON. THOMAS J. STOVALL, ET AL

DATE	NR.	PROCEEDINGS	H-85-3676

12-6-89 287 (JDA) ORDER . . . Plaintiff's motion seeking a court order requiring James Murphy to return various legal records and work product is DENIED. . . . The Plaintiff's request for the refund of $1,000.00 placed in the registry of the Court is DENIED. . . . Defendants Nancy Linkous, Thomas Henderson's, and Donn Fullenweider's motions for sanctions are GRANTED. . . .

3-21-90 290 Charles E. Long's Motion for Reimbursement of Fees and Expenses and for Sanctions against Plaintiff, filed.

4-20-90 Partial Record on Appeal forwarded to the Court of Appeals.

5-12-90 295 Pltf and Appellant Linkous' REQUEST OF THE CLERK of this USDC to Transmit Record & to Supplement . . . to the 5th Circuit Court of Appeals.

5-12-90 296 Pltf MOTION TO SHOW AUTHORITY.

6-5-90 297 (JDA) ORDER . . . Long's motion for reimbursement of fees and expenses is DENIED. Pltf's motion to "show authority" is DENIED.

7-9-90 299 Certified Copy of ORDER by Court of Appeals DISMISSING Appeal for failure of appellant to file a brief.

4/20/90

APPENDIX AC

CASE NO. 89-2928

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DAN M. LINKOUS,
Plaintiff - Appellant,

v.

HONORABLE THOMAS J. STOVALL,
et al, Defendants - Appellees.

Appellant Linkous' Request for Extension of Time
To File Appellant's Brief

. . .

Respectfully submitted,

/s/ 4/20/90
Dan M. Linkous
Plaintiff and Appellant
pro se
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838

APPENDIX AD

UNITED STATES DISTRICT COURT
For the Southern District of Texas
Houston Division

DAN M. LINKOUS, Plaintiff	§	CLERK, U. S. DISTRICT COURT SOUTHERN DISTRICT OF TEXAS ENTERED
	§	MAY 16, 1990
VS.	§	JESSE E. CLARK, CLERK BY DEPUTY /s/
DONN C. FULLENWEIDER, ET AL. Defendants	§	Civil Action No. H-85-3676 (Fifth Circuit Court of Appeals, Case H-89-2928)

Plaintiff Dan M. Linkous' Motion To "Show Authority"

. . . DAN M. LINKOUS, Plaintiff and Appellant . . . entertaining documents and acting on such documents with submission of order in this case after Plaintiff's filing of "Notice of Appeal" on or about August 18, 1989 . . . granting jurisdiction to the Fifth Circuit Court of Appeals and abrogating jurisdiction of the U. S. District Court in any of these matters subsequent to the filing of "Notice of Appeal" . . .

WHEREFORE, Dan M. Linkous, Plaintiff in the above-captioned matter, requests this court to show its authority for acting in all matters subsequent to the filing of the "Notice of Appeal" by Plaintiff Linkous in regards to its jurisdiction, . . . items subsequent to the filing of the notice of appeal, . . . matters that have transpired subsequent to the filing of the notice of the notice of appeal . . . also requests that this court and the clerk's office transmit the complete, full, and accurate record to the Fifth Circuit Court of Appeals . . . show authority why it has not ordered the defendants and their counsel or some deponents to

file their motions with the Fifth Circuit Court of Appeals instead of this U. S. District Court on all matters subsequent to the notice of appeal filed . . .

Respectfully submitted,

/s/
Dan M. Linkous, M.D.

APPENDIX AE

UNITED STATES DISTRICT COURT
For the Southern District of Texas
Houston Division

DAN M. LINKOUS, Plaintiff	§	CLERK, U. S. DISTRICT COURT SOUTHERN DISTRICT OF TEXAS ENTERED MAY 25, 1990 JESSE E. CLARK, CLERK BY DEPUTY /s/
VS.	§	
DONN C. FULLENWEIDER, ET AL. Defendants	§	Civil Action No. H-85-3676

ORDER

Pending before the Court are Charles E. Long's motion for reimbursement of fees and expenses and for sanctions and Plaintiff Dan M. Linkous' motion for this Court to "show authority" for ruling on any motion after he filed his notice of appeal. . . .

. . . after reviewing the transcript of the deposition of Charles Long, the Court cannot conclude that this particular deposition was abusive or concerned entirely with irrelevant matters.

. . . Plaintiff's motion to "show authority," the Court simply notes that it has ruled on all pending post-judgment motions at the request of the Court of Appeals. Accordingly, it is hereby

ORDERED that Long's motion for reimbursement of fees and expenses and for sanctions is DENIED. It is further

ORDERED that Plaintiff's motion to "show authority" is DENIED.

SIGNED in Houston, Texas, this 24th day of May, 1990.

/s/
James DeAnda, Chief Justice
United States District Court

APPENDIX AF

UNITED STATES DISTRICT COURT
For the Southern District of Texas
Houston Division

		CLERK, U. S. DISTRICT COURT
DAN M. LINKOUS,	§	SOUTHERN DISTRICT OF TEXAS
Plaintiff	§	ENTERED
	§	MAR 25, 1990
VS.	§	JESSE E. CLARK, CLERK
	§	BY DEPUTY /s/
DONN C. FULLENWEIDER, ET AL.	§	
Defendants	§	Civil Action No. H-85-3676

ORDER

Pending before the Court are Plaintiff Dan M. Linkous' motion for reconsideration of the Court's final judgment. Defendants . . . motions for sanctions . . . Plaintiff's motion seeking a Court order requiring his counsel to return various legal records and work product, and Plaintiff's motion seeking the refund of $1,000.00 previously deposited in the Court's registry to . . . assure orderly discovery.

. . . to deter future violations of Rules 11 and 26 and 28 U.S.C. § 1927. The Court concludes that a sanction of $10,000.00 payable to each Defendant, Nancy Linkous, Thomas Henderson, and Donn Fullenweider . . . sufficient to serve the goals of Rules 11 and 26 and 28 U.S.C. § 1927. . . . in addition to the taxable costs of court . . .

ORDERED that Plaintiff's motion seeking a Court order requiring James Murphy to return various legal records and work product is DENIED. It is further

ORDERED that Plaintiff's request for the refund of $1,000.00 placed in the registry of the Court is DENIED. . . .

ORDERED that Defendants Nancy Linkous,' Thomas Henderson's, and Donn Fullenweider's motions for sanctions are GRANTED. . . .

ORDERED that Plaintiff's motion to reconsider the Court's final judgment is DENIED.

SIGNED in Houston, Texas, this 22nd day of March, 1990.

/s/

James DeAnda, Chief Justice
United States District Court

Supreme Court, U.S.
FILED
JAN 15 1991
JOSEPH F. SPANIOL, JR.
CLERK

(3)

NO. 90-774

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAN M. LINKOUS
Petitioner,

v.

THOMAS STOVALL, et. al.
Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO
THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

JOINT RESPONSE TO PETITION FOR WRIT OF CERTIORARI

FLOYD, TAYLOR & RILEY

Warren Taylor
1301 McKinney, Suite 3440
Houston, Texas 77010
(713) 655-8411

Attorneys for Respondent
Donn C. Fullenweider

QUESTIONS PRESENTED FOR REVIEW

The five questions which Petitioner alleges are presented should be condensed to two issues:

1) Did the Fifth Circuit err in dismissing Petitioner's appeal for failing to timely file his appeal brief? and

2) In view of the patent lack of merit to Petitioner's underlying claims, should this Court reinstate his appeal?

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Community Coalition for Media Change v. F.C.C., 646 F.2d 613 (1980) 11

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Gilroy v. Erie Lackawanna Railroad Co., 421 F.2d 1321 (2nd Cir. 1970) 10

Gobney v. Jones, 904 F.2d 272 (5th Cir. 1990) 16

Hale v. Horney, 786 F.2d 688 () 5th Cir. 1986) 16

Holloway v. Walker, 790 F.2d (1170 (5th Cir. 1986) 16

Kimball v. The Florida Bar, 632 F.2d (1283 (5th Cir. 1980) 16

Louisiana World Exposition, Inc. v. Logue, 746 F.2d 1033 (5th Cir. 1984) 11

Marcaida v. Rascoe, 569 F.2d 828 (5th Cir. 1978) 11

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Olympic Co. v. H.D. Harrison, Inc., 413 F.2d 973 (5th Cir. 1969) 11

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Stotler and Co. v. Able, 837 F.2d 1425 (7th Cir. 1988) 11

Swinburn v. First Federal Savings and Loan of Lubbock, Texas, 487 F.2d 338 (5th Cir. 1973) 11

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NO. 90-774

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAN M. LINKOUS
Petitioner,

v.

THOMAS STOVALL, et. al.
Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT RESPONSE TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Come now Donn Fullenweider, Thomas Henderson, and Nancy Linkous, three of the Respondents in the above cause, and

file their Joint Response to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, and as reasons to deny the Writ would respectfully show this Court as follows:

STATEMENT OF THE NATURE AND RESULT OF THE CASE

This is an appeal from an order entered by the Fifth Circuit Court of Appeals dismissing Petitioner's Appeal for Want of Prosecution for failing to timely file his Appeal Brief.

OPINIONS BELOW

The trial court dismissed Petitioner's claims on Motions for Summary Judgment, and issued two opinions finding Petitioner's pleadings violated Rule 11, Federal Rules of Civil Procedure. Those opinions are appendices A and B in Respondents' Appendix to Joint Response to Petition for Writ of Certiorari.

The Fifth Circuit Court of Appeals dismissed Petitioner's Appeal for failing to timely file his Appeal Brief. That Order is Petitioner's Appendix C.

REASONS TO DENY THE WRIT OF CERTIORARI

REASON NO. 1.

The Court of Appeals correctly dismissed the case for want of prosecution after Petitioner failed to file his Brief.

REASON NO. 2.

The Court of Appeals had adequate alternative grounds for dismissal since Petitioner's appeal lacked merit.

REASON NO. 3.

This Court should deny the Writ of Certiorari due to the complete lack of merit to Petitioner's underlying claims.

STATEMENT OF FACTS

Pursuant to Rule 15.1, Rules of the Supreme Court of the United States, Respondents dispute the accuracy and completeness of the statements of both fact and law contained in the Petition for Writ of Certiorari, and respectfully submit the following history of this case:

This appeal is only one of many lawsuits filed by Petitioner against his former wife Nancy Linkous, her lawyer Donn C. Fullenweider, Fullenweider's family, his law firm and law associates arising out of a 1983 divorce action between Petitioner and Nancy Linkous wherein Petitioner received an unfavorable verdict and judgment. Petitioner has filed numerous lawsuits and grievances against Judges, court officials, court reporters, a court-

appointed psychologist, and other lawyers who have taken action of which Petitioner disapproves. Two separate times the United States District Court in this case found that Petitioner's pleadings violated Rule 11 of the Federal Rules of Civil Procedure. (Apps. A and B).

On June 28, 1985 Petitioner filed his original complaint. Petitioner sued the Honorable Thomas J. Stovall, Jr. (presiding judge of the Second Administrative Judicial District of Texas), the Honorable Arthur C. Lesher (Texas State District Judge), the Honorable Dean Huckabee (Judge of the 247th Judicial District Court of Harris County, Texas), Muriel Fiake (a Court appointed psychologist in Petitioner's divorce case), Donn Fullenweider (the attorney for Petitioner's former wife), Donald P. Fogo (the guardian ad litem), and Nancy

Linkous (Petitioner's former wife). The suit requested in part an injunction to prevent Petitioner's divorce case in the Family District Court of Harris County, Texas, from proceeding to trial. (App. C.)

All of the Respondents filed Motions to Dismiss. The Court deferred ruling on the Motions to Dismiss, granted leave for James M. Murphy to appear as counsel for the Petitioner, and granted leave for Petitioner to file an Amended Complaint setting forth "specific facts" to support his complaints. The Petitioner's Amended Complaint was filed November 12, 1985. (Pet. App. p.53) Respondents filed Second Motions to Dismiss. In response to those motions, Petitioner filed a Motion for Leave to a File Second Amended Complaint. On October 16, 1987, the Trial Court granted all Motions to Dismiss, found

that Petitioner's complaint violated Rule 11, and invited Respondents to file Motions for Sanctions. (App. A).

However, Petitioner was again granted leave to amend his Complaint, this time to allege a Racketeer Influenced and Corrupt Organizations Act cause of action against four of the Defendants. Petitioner filed his Second Amended Complaint on November 10, 1987. (App. D) The trial court then appointed William E. Junell, Jr. to represent Nancy Linkous pursuant to 28 U.S.C. §1915(d). (Pet. App. p. 57)

The Defendants filed Motions for Summary Judgment, which were granted on July 19, 1989. (Pet. App. F.). Petitioner failed to file any evidence in opposition to those motions. On March 22, 1990, the Court granted Motions for Sanctions, finding that Petitioner's

pleadings violated Rule 11 of the Federal Rules of Civil Procedure, and awarding $30,000 in sanctions against Petitioner and his counsel. (App. B). Petitioner appealed, pro se. His attorney, James M. Murphy, also filed an appeal from the sanctions award.

The records for the Fifth Circuit Court of Appeals reflect that a partial record was filed in that Court on April 13, 1990. On that date, a briefing schedule was forwarded to all parties setting forth that Petitioner's Brief was due May 16, 1990 (Pet. App. K). Petitioner was specifically warned that allegations of "failure to have access to the record will not be considered grounds for extending the time." (Pet. App. K.)

Petitioner now contends no record was filed with the Fifth Circuit. However, he waited until May 12, 1990 to file

his "Request for the Clerk of this U.S. D.C. to Transmit Record and to Supplement and More Specifically Clarify the Designation of Record to be Transmitted to the Fifth Circuit Court of Appeals." (Pet. App. p. 60) Then, on May 23, 1990, Petitioner filed a "Motion for Extension of Time to File his Appeal Brief." (Pet. App. M) On June 5, 1990, the Fifth Circuit denied Petitioner's Motion for an Order directing the Clerk of the District Court to transmit the entire file to the Fifth Circuit. (Pet. App. A.)

Petitioner's Motion for Extension of Time to File his Brief was also denied. (Pet. App. A.) Petitioner's Motion for Rehearing on that Extension request was denied by a three judge panel. (Pet. App. B.) Petitioner did not file his Brief. (Pet. App. C.) His appeal was

dismissed for want of prosecution on July 9, 1990. (Pet. App. C.)

ARGUMENT

REASON NO. 1 (RESTATED).

The Court of Appeals correctly dismissed the case for want of prosecution after Petitioner failed to file his Brief.

ARGUMENT UNDER REASON NO. 1.

The Court of Appeals has wide discretion in considering Motions for Extension of Time. Federal Rules of Appellate Procedure Rules 26 and 27; Fifth Circuit Court of Appeals Local Rules 27.1, 27.2, and 27.2.1. Litigants must be aware of briefing deadlines, and be prepared to meet them. United States v. Raimondi, 760 F.2d 40 (2nd Cir. 1985); Gilroy v. Erie Lackawanna Railroad Co., 421 F.2d 1321 (2nd Cir. 1970). A litigant ignores

a briefing deadline at his own peril. Id.

The Fifth Circuit has long warned litigants appeals may be dismissed for failing to meet briefing deadlines. Louisiana World Exposition, Inc. v. Logue, 746 F.2d 1033 (5th Cir. 1984); Marcaida v. Rascoe, 569 F.2d 828 (5th Cir. 1978); Swinburn v. First Federal Savings and Loan of Lubbock, Texas, 487 F.2d 338 (5th Cir. 1973); Tidwell v. Dees, 464 F.2d 1297 (5th Cir. 1972); Olympic Co. v. H.D. Harrison, Inc., 413 F.2d 973 (5th Cir. 1969). That warning has been issued by other circuits as well. Barber v. American Security Bank, 841 F.2d 1159 (D.C. Cir. 1988); Stotler and Co. v. Able, 837 F.2d 1425 (7th Cir. 1988); Community Coalition for Media Change v. F.C.C., 646 F.2d 613 (1980).

In this case, the Court of Appeals issued a notice that a partial record was actually filed on April 13, 1990. Although Petitioner contends no record was actually filed, his appeal was not dismissed for failure to file the record. His appeal was denied for failing to file a brief.

Although Petitioner filed a "request" for the entire record to be filed in the Court of Appeals, he filed that request four days before his brief was due. He never made a showing of any specific item that was needed to prepare his brief, nor did he make any effort to file his brief in the absence of the record. It was obviously possible for him to file a brief similar to the one filed in this Court, excerpting necessary pleadings for reference by the Court of Appeals. Such a brief with excerpts is

specifically authorized by Rules 28(e) and 30 of the Federal Rules of Appellate Procedure.

The Court of Appeals was certainly entitled to consider from the volume and tone of documents Petitioner filed in that Court that the purpose of the Appeal was further harassment of Respondents. Such a finding would be consistent with the trial court's finding that the entire lawsuit was brought in violation of Rule 11. The Fifth Circuit also could have found, again from the volume and tone of the various motions filed by Petitioner, that Petitioner wanted the voluminous record before the Court of Appeals solely to harass that Court and delay proceedings, not as an aid to determine any issues on appeal. In any event, nothing prevented Petitioner from filing a brief. Nor did Petitioner seek a rehearing of

the dismissal of his appeal and file a brief at that time as a show of good faith.

The Court of Appeals was well within its discretion in dismissing the appeal and its decision should not be disturbed.

REASON NO. 2 (RESTATED).

There were adequate alternative grounds for dismissal since Petitioner's appeal lacked merit.

REASON NO. 3 (RESTATED).

This Court should deny the Writ of Certiorari due to the complete lack of merit to Petitioner's underlying claims.

ARGUMENT UNDER REASONS NOS. 2 AND 3.

Even in the event this Court is concerned there might have been some error in the dismissal, which Respondents strongly deny, the only appropriate relief would be the reinstatement of his

appeal to be considered by the Court of Appeals. Even that limited relief should be denied because the underlying claims lack any merit, and reinstatement would only result in further harassment of the Respondents, not in the ultimate granting of any relief to Petitioner.

The Fifth Circuit had the authority on its own motion to dismiss Petitioner's appeal for lack of merit, even prior to the filing of briefs. Fifth Circuit Court of Appeals Local Rule 42.2, styled "Frivolous and Unmeritious Appeals", states as follows:

> "If upon a hearing of any interlocutory motion or as a result of a review under Local Rule 34 it shall appear to the court that the appeal is frivolous and entirely without merit, the appeal will be dismissed."

In this case, the District Court found on two different occasions that

pleadings brought by Petitioner were brought in violation of Rule 11 of the Federal Rules of Civil Procedure. This Court can determine from the face of the petitions themselves, as well as the recitation of his claims in the Petition for Writ of Certiorari, that those rulings by the trial court were entirely correct. Since the underlying case lacked merit, the Fifth Circuit had the discretion to dismiss the appeal even without briefs. Gobney v. Jones, 904 F.2d 272 (5th Cir. 1990); Mullen v. Glati, 843 F.2d 293 (9th Cir. 1988); Hale v. Horney, 786 F.2d 688 ()5th Cir. 1986); Holloway v. Walker, 790 F.2d (1170 (5th Cir. 1986); Eitel v. Holland, 798 F.2d 815 (5th Cir. 1986); Kimball v. The Florida Bar, 632 F.2d (1283 (5th Cir. 1980).

This Court has wide discretion in accepting a Writ. Rule 10, Rules of the

Supreme Court of the United States; Shapairo v. Doe, 90 S.Ct. 641 (1970); Pittsburgh Towing Company v. Mississippi Valley Barge Line Co., 87 S.Ct. 641 (1966). For the reasons stated herein, as well as those stated in the District Court's Memoranda and Orders, the Petition for Writ of Certiorari should be denied.

JOINDER IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Respondents Thomas Henderson and Nancy Linkous join in this Response.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Respondents respectfully pray that the

Petition for Writ of Certiorari be denied.

Respectfully submitted,

FLOYD, TAYLOR & RILEY

BY: Warren Taylor

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Attorneys for Respondent
Donn C. Fullenweider

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Joint Response to Petition for Writ of Certiorari has been forwarded to all parties and/or their counsel by certified mail return receipt requested on this 14th day of January, 1991.

Warren Taylor

Warren Taylor

Supreme Court, U.S.
FILED
JAN 15 1991
JOSEPH F. SPANIOL, JR.
CLERK

(4)

NO. 90-774

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAN M. LINKOUS
Petitioner,

v.

THOMAS STOVALL, et. al.
Respondents,

ON PETITION FOR WRIT OF CERTIORARI TO
THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

APPENDIX TO JOINT RESPONSE TO PETITION FOR WRIT OF CERTIORARI

FLOYD, TAYLOR & RILEY

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Attorneys for Respondent
Donn C. Fullenweider

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APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF TEXAS
HOUSTON DIVISION

DAN M. LINKOUS, Plaintiff	§	
	§	
VS.	§	CIVIL ACTION NO. H-85-3676
	§	
HONORABLE CHARLES DEAN HUCKABEE, JUDGE OF THE 247TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS; HONORABLE ARTHUR C. LESHER, JUDGE; DONN C. FULLENWEIDER; DON FOGO; MURIEL FLAKE; AND NANCY LINKOUS, Defendants.	§	

MEMORANDUM AND ORDER

Pending before the Court are Defendants' Rule 12 motions to dismiss...

* * *

In this action, Plaintiff claims Defendants engaged in irregularities and improprieties during the course of the litigation. Asserting federal question jurisdiction under 28 U.S.C. §§ 1331,

1343(3) and 1343(4), Plaintiff alleges that Defendants' actions deprived him of his fundamental liberty interest in access to his children.

* * *

First, this Court does not have subject-matter jurisdiction over most of Plaintiff's claims. Plaintiff contends that he is not seeking to litigate his divorce case in this court but rather he is seeking to address the violation of his constitutionally protected rights. The Court finds that Plaintiff is, in essence, seeking reversal of the interlocutory state court decisions. Such relief is in the nature of appellate review and outside the purview of this Court's jurisdiction.

* * *

Secondly, Plaintiff's complaint against Defendants Huckabee and Lesher

fails to state a claim upon which relief can be granted. A judge acting within his judicial jurisdiction enjoys absolute immunity.

* * *

Next, the Court will analyze Defendants Linkous', Flake's, Fogo's and Fullenweider's motions to dismiss Plaintiff's first amended complaint. Defendants' Fed. R. Civ. P. 12(b)(1) motion also asserts lack of appellate jurisdiction, or, alternatively, the application of the doctrine of abstention. Defendants' Fed. R. Civ. P. 12(b)(6) motion contends that Plaintiff cannot state a claim under Section 1983 because Defendants have not acted "under color of state law."

As previously stated, the Court concludes subject-matter jurisdiction over Plaintiff's claims is lacking.

First, Plaintiff is essentially seeking reversal of the state court decision. Such relief is in the nature of state appellate review and outside this Court's jurisdiction. Second, this Court abstains from exercising jurisdiction with domestic relation issues traditionally within the province of state courts.

In order for Plaintiff to obtain relief under 42 U.S.C. §1983, Plaintiff must show that Defendants deprived him of a constitutional or federal law right, and that the deprivation occurred under color of state law....

The Court finds that Plaintiff has failed to state a cause of action under 42 U.S.C. §1983.

Moreover none of the individual Defendants' acts against Plaintiff "occurred under color of state law."

* * *

Plaintiff's remaining cause of action in his amended complaint alleges that Section 11.11 of the Texas Family Code is unconstitutional...

The Court again lacks jurisdiction. Plaintiff's claim for declaratory relief is a suit barred by the Eleventh Amendment because the State of Texas is the real party in interest.

* * *

In accordance with the foregoing opinion, the Court

ORDERS all claims against Defendants Kenyon, Huckabee and Lesher are DISMISSED. The Court further finds that Plaintiff's claims against these Defendants were not warranted by the facts and existing law and were presented in bad faith for the purpose of harassment. Thus, the Court finds Rule 11 sanctions are appropriate. See Hale v. Harney, 786

F.2d 688 (5th Cir. 1986). Defendants' counsel shall file affidavits of attorneys' fees by November 2, 1987. Plaintiff may file a controverting affidavit by November 12, 1987. The Court will then impose appropriate sanctions against Plaintiff, for which Plaintiff and Plaintiff's counsel shall be jointly and severally liable. The Court further

ORDERS all motions to dismiss all claims contained in Plaintiff's amended complaint are GRANTED....

The Court DEFERS ruling on Defendant Fullenweider's motion for sanctions. The Court will sua sponte impose further Rule 11 sanctions against Plaintiff and Plaintiff's counsel at the conclusion of this litigation for Plaintiff's conduct to date. Plaintiff has consumed considerable judicial resources to rule on multiple frivolous and bad faith claims. This

litigation is now narrowed to one issue and limited to a small number of defendants. Plaintiff is cautioned that continued abuse of judicial resources will only result in an increase in the amount of sanctions that will be ordered.

DONE in Houston, Texas, this 16th day of October, 1987.

James DeAnda
UNITED STATES DISTRICT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAN M. LINKOUS	*	
	*	
VS.	*	CIVIL ACTION NO.
	*	H-85-3676
	*	
DONN C. FULLENWEIDER	*	

ORDER

Pending before the Court are Plaintiff Dan M. Linkous' motion for reconsideration of the Court's final judgment, Defendants Nancy Linkous, Thomas Henderson's, Donn Fullenweider's motions for sanctions...

Defendants Nancy Linkous, Thomas Henderson, and Donn Fullenweider have filed motions for sanctions requesting reimbursement for costs and attorneys' fees. The Court has already found in its October 16, 1987 Memorandum and Order that Plaintiff's original complaint vio-

lated Fed. R. Civ. P. 11. The Court now further finds that Plaintiff's motion for leave to file a third amended complaint violated Fed. R. Civ. P. 11 because it was filed merely to harass or to cause unnecessary delay or needless increase in the cost of litigation. Moreover, the Court finds that Plaintiff's discovery requests and objections to discovery were filed merely to harass or to cause unnecessary delay or needless increase in the cost of litigation in violation of Fed. R. Civ. P. 26(g) and 28 U.S.C. §1927. Plaintiff's insistence upon filing numerous pleadings pro se justifies the imposition of sanctions against both him and his counsel.

Defendants have requested full reimbursement as a sanction. However, it is clear that full reimbursement for costs and attorneys' fees would exceed

$100,000.00, an amount that Plaintiff and Plaintiff's counsel could almost surely not repay and that may be more than is necessary to deter future violations of Rules 11 and 26 and 28 U.S.C. §1972. The Court concludes that a sanction of $10,000.00 payable to each Defendant, Nancy Linkous, Thomas Henderson, and Donn Fullenweider, (for a total of $30,000.00) would be sufficient to serve the goals of Rules 11 and 26 and 28 U.S.C. §1927. The Court notes, however, that these sanctions are in addition to the taxable costs of court, which the Court awarded all Defendants in its final judgment.

* * *

ORDERED that Defendants Nancy Linkous', Thomas Henderson's, and Donn Fullenweider's motions for sanctions are GRANTED. James Murphy and Dan M. Linkous are jointly liable to pay the sum of

$10,000.00 to each Defendant; i.e., Nancy Linkous, Thomas Henderson, and Donn Fullenweider. It is further

ORDERED that Plaintiff's motion to reconsider the Court's final judgment is DENIED.

SIGNED in Houston, Texas this 22nd day of March, 1990.

JAMES DeANDA, CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAN M. LINKOUS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
HONORABLE THOMAS J. STOVALL, JR., AS PRESIDING JUDGE OF THE SECOND ADMINISTRATIVE JUDICIAL DISTRICT OF TEXAS; HONORABLE DEAN HUCKABEE,	§	CIVIL ACTION NO. H-85-3676
	§	
JUDGE OF THE 247TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS; HONORABLE ARTHUR C. LESHER, JUDGE; DONN C. FULLENWEIDER; DON FOGO; MURIEL FLAKE; AND NANCY L. LINKOUS,	§	
	§	
Defendants.	§	

COMPLAINT

DAN M. LINKOUS, hereafter referred to as Plaintiff, brings this civil rights suit for damages, injunctive and declaratory relief pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§ 2201 & 2202, to enjoin the on-going deprivation of Plaintiff's fundamental liberty interest in the right to family integrity, his relationship with his children, and his right to due process of law in connection with preparation for a state court custody suit. Plaintiff also seeks declaratory relief that § 11.11 of the Texas Family Code is facially unconstitutional and as applied.

I.

PARTIES

All parties to this suit are citizens of the United States and the State of Texas, and reside within the Southern District of Texas.

Plaintiff is the natural father of Jessica Louise Linkous and Danny Michael Linkous, Jr. He is a physician who resides and practices medicine in the Southern District of Texas.

Honorable Thomas J. Stovall, Jr., is the presiding judge of the Second Administrative Judicial District of Texas, and is joined only in such capacity since he maintains supervisory power over the state court proceedings which give rise to this action.

Honorable Dean Huckabee is the presiding judge of the 247th Judicial District Court of Harris County, Texas, which court has and maintains jurisdiction over the state court proceedings which give rise to this action.

Honorable Arthur C. Lesher is a retired judge who was appointed by Judge Stovall to preside over the most recent

state court proceedings which are infringing upon Plaintiff's constitutionally protected liberty interests.

Donn C. Fullenweider is an attorney who represents Defendant Nancy L. Linkous in the referenced state court proceedings.

Don Fogo is an attorney appointed as an ad litem for the children in connection with the state court proceedings.

Muriel Flake is a court-appointed counselor who has participated and is participating in the on-going deprivation of Plaintiff's liberty interests, contrary to a previous state court order.

Nancy L. Linkous is Plaintiff's wife, and she, under color of state law, maintains custody of the two minor children to the exclusion of Plaintiff, pursuant to state action.

II.

FACTUAL STATEMENT

Plaintiff and Defendant Nancy L. Linkous have been married for a number of years, and are the natural parents of Jessica Louise Linkous and Danny Michael Linkous, Jr., who are ages 7 and 6 respectively. On April 4, 1983, Defendant Nancy L. Linkous filed an action for divorce against Plaintiff in the 247th Judicial District Court of Harris County, Texas, in cause number 83-28196, styled In the Matter of the Marriage of Nancy L. Linkous and Danny Michael Linkous, Danny M. Linkous, M.D., P.A., and In the Interest of Jessica Louise Linkous and Danny Michael Linkous, Jr., Minor Children.

Through various temporary orders, Defendant Nancy L. Linkous has been named Temporary Managing Conservator of the children, and Plaintiff has been named Temporary Possessory Conservator, with

rights of possession and access, at specified times and places. Copies of these relevant orders are attached hereto collectively as Exhibit "A". However, on March 15, 1985, Defendant Huckabee, contrary to state law and procedure, and with an intent to punish and harass Plaintiff due to prior conflicts between Plaintiff and said Defendant, orally pronounced a purported "emergency order" under § 11.11, Texas Family Code, terminating and suspending Plaintiff's rights to access to and possession of his two minor children without hearing and notice on the issue to Plaintiff. Defendants Huckabee, Fullenweider and Nancy L. Linkous were all acting under color of state law in this regard. As a result of such conduct on the part of Defendant Huckabee, Plaintiff filed a Motion to Recuse Judge Huckabee, on March 16, 1985,

from further participation in the case under Rule 18A, Texas Rules of Civil Procedure. On March 19, 1985, while the motion to recuse was then pending without resolution, Judge Huckabee entered an order, a copy of which is attached hereto as Exhibit "B", which memorialized his oral pronouncement of March 15, 1985. Plaintiff has not seen, nor has he had access to his children since.

On May 15, 1985, Plaintiff filed a motion to lift the emergency order entered by Judge Huckabee, and, since Plaintiff's motion to recuse was still then pending, Judge Stovall appointed Defendant Arthur C. Lesher to hear the matter. A copy of Plaintiff's motion is attached hereto as Exhibit "C". A hearing was held on May 28, 1985, before Judge Lesher, wherein he declined to entertain Plaintiff's motion because of

the pending recusal motion, and a motion filed by Defendant Fogo for visitation between Plaintiff and his children was denied by Judge Lesher. Judge Lesher entered an order, a copy of which is attached hereto as Exhibit "D", which effectively prevents Plaintiff from possession of and access to his children indefinitely. Plaintiff contends that this order once again was entered contrary to state law and procedure, and without evidentiary support, and once again Plaintiff has been and is being denied his fundamental liberty interests to family integrity and a meaningful relationship with his children.

Texas law prohibits any appellate review of temporary orders of this nature, and Plaintiff is relegated to a total absence of contact with his children while the divorce/custody case is

still pending in state court. Trial on the merits is not set until December 1985. Plaintiff is being continually deprived of his fundamental liberty interests without due process of law, and he is being effectively deprived of due process of law in connection with the pending state court custody case since he is unable to see his children. Without access to his children, Plaintiff is unable to meaningfully prepare for the final determination of the custody issue. The conduct of Defendants Huckabee, Lesher, Fullenweider, Fogo, Flake and Nancy Linkous is designed to prevent Plaintiff from access to his children during the pendency of the custody lawsuit, with a view to making the ultimate determination of the custody issue a foregone conclusion in favor of Defendant Nancy Linkous. Furthermore, the conduct

of said Defendants in depriving Plaintiff of his fundamental liberty interests without due process is being used by said Defendants to leverage Plaintiff into a position of settlement by threatening Plaintiff with ultimate destruction of family integrity and Plaintiff's relationship with his children. All of such conduct is under color of state law, and said Defendants are acting in concert with each other to deprive Plaintiff of his fundamental liberty interests and due process of law.

III.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 & 1343 (3) & (4), since this is an action arising under the Constitution and laws of the United States. Plaintiff's cause of action arises under 42 U.S.C. §§ 1983,

1985, 1986, 1988, and the Constitution of the United States and all amendments thereto. The acts and practices of the Defendants and their agents, as alleged herein, were and are being preformed under color of law, and, therefore, constitute actions of the State within the meaning of 42 U.S.C. 1983, and the Fourteenth Amendment to the United States Constitution. By reason of the conduct of the Defendants herein, as alleged, Plaintiff is being denied and deprived of his fundamental liberty interest of a meaningful parent/child relationship and family integrity, through procedures which violate the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution. Plaintiff's parent/child relationship has been and is continually being damaged, harmed and destroyed by the acts

and practices of Defendants, and Plaintiff is suffering irreparable injury and is threatened with irreparable harm in the future by the acts complained of herein, with no adequate remedy under state law to vindicate same. A substantial loss and impairment of Plaintiff's fundamental liberty interests and his due process rights attendant to a final determination of such liberty interests has occurred and will continue to occur so long as Defendant's collective conduct continues.

IV.

CAUSES OF ACTION

1. Plaintiff seeks a preliminary injunction against Defendants prohibiting each of them from depriving Plaintiff of his fundamental liberty interests in his parent/child relationship and his due process rights attendant to a final de-

termination of the issue of custody in the state court proceedings. Plaintiff has no plain, adequate remedy to speedily redress the wrongs herein complained of, other than through this action. Because of the precedential attitude of bad faith and harassment previously exhibited by Defendants toward Plaintiff, any other remedy to which Plaintiff could be remitted in the state courts would be attended by such uncertainties and delays as to deny substantial relief, involve a multiplicity of suits, and cause further irreparable injury, damage, harm and inconvenience to Plaintiff. The award of damages is not adequate to protect Plaintiff from the continuing conduct of Defendants and the chilling effect such conduct has upon the exercise of Plaintiff's constitutional rights. On final hearing herein, Plaintiff requests

that the preliminary injunction be made permanent, and that Plaintiff recover damages from Defendants in an appropriate sum, for the damages heretofore sustained by Plaintiff because of the alleged conduct, along with attorney's fees and costs of court.

2. Plaintiff further requests that the Court declare § 11.11 of the Texas Family Code unconstitutional on its face and as construed and applied, because it allows state interference with a fundamental liberty interest during the course of an on-going controversy that alters the status quo of the family integrity and the parent/child relationship without due process of law, nor does it allow any procedure or means by which such decisions can be reviewed to determine their validity. Further, § 11.11 operates to deprive Plaintiff and those similarly

situated of equal protection of law, as construed and applied.

V.

ANTI-INJUNCTION STATUTE AND ABSTENTION

Inasmuch as this is a suit to redress the deprivation under color of state law rights secured to Plaintiff by the Constitution, this case falls within the exception to the federal anti-injunction statute, 28 U.S.C. § 2283, that provides that a federal court may not enjoin state court proceedings "except as expressly authorized by Act of Congress."

Plaintiff further alleges and will show that abstention is inappropriate in this case because of bad faith harassment of Plaintiff, and the existence of extraordinary circumstances which create a pressing need for immediate federal equi-

table relief to protect Plaintiff from great, immediate and irreparable harm.

WHEREFORE, Plaintiff prays that this Court:

1. Set this matter for hearing on an expedited basis to hear Plaintiff's request for a preliminary injunction;

2. Upon hearing, preliminarily and permanently enjoin Defendants from depriving Plaintiff of his fundamental liberty interests in his relationship with his children and family integrity, and for such other injunctive relief which the Court deems appropriate consistent with the allegations contained herein;

3. Declare that § 11.11, Texas Family Code, on its face and as construed and applied, deprives a parent of a fundamental liberty interest without due

process and violates equal protection of law;

4. And, award Plaintiff damages, attorney's fees and costs, and such other and further relief, both general and special, at law or in equity, to which Plaintiff might show himself justly entitled.

Respectfully submitted,

DANNY MICHAEL LINKOUS, pro se

/s/

3102 Breezy Pines
Kingwood, Texas 77339

AFFIDAVIT OF DAN M. LINKOUS

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared DAN M. LINKOUS, known to me to be the person whose signature appears hereinafter, who, after being by me duly sworn, stated upon his oath as follows:

> "My name is Dan M. Linkous. I am over the age of 21 years and am fully competent and able to make and give this affidavit. I have personal knowledge of the matters of fact contained in the foregoing Complaint; I have read said Complaint; and the matters of fact and the allegations contained therein are true and correct."

/s/
DAN M. LINKOUS

SUBSCRIBED AND SWORN TO before me on this 26th day of June, 1985.

/s/ Bonnie S. Titus
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAN M. LINKOUS	§	
	§	
Plaintiff,	§	
	§	
V.	§	CIVIL ACTION NO.
	§	H-85-3676
	§	
HONORABLE CHARLES DEAN HUCKABEE, JUDGE OF THE 247TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS; HONORABLE ARTHUR C. LESHER, JUDGE; DONN C. FULLENWEIDER DON FOGO; MURIEL FLAKE; NANCY L. LINKOUS; HONORABLE THOMAS KENYON; SITTING AS PRESIDING JUDGE OF THE 247TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS; THOMAS HENDERSON; AND THE 247TH JUDICIAL DISTRICT COURT OF	§	

HARRIS COUNTY, §
TEXAS §
Defendants. §

SECOND AMENDED COMPLAINT

DAN M. LINKOUS, Plaintiff, with leave of Court first having been obtained, respectfully files this Second Amended Complaint. This Second Amended Complaint seeks to incorporate Plaintiff's Amended Complaint filed on November 12, 1985, and further seeks redress for damages and for injunctive relief pursuant to 18 U.S.C. Sections 1961, 1962, 1964, 1965 and 1966 [R.I.C.O.].

I.

JURISDICTION

The jurisdiction of this Court has been invoked under 28 U.S.C. Sections 1331 and 1343 (3) and (4), since this is an action arising under the Constitution and laws of the United States. Jurisdic-

tion is further invoked pursuant to 18 U.S.C. § 1962.

II.

PARTIES AND FACTUAL STATEMENT

All parties to this suit are citizens of the United States and the State of Texas, and reside within the Southern District of Texas, with the exception of the party defendant 247th Judicial District Court of Harris County, Texas.

Plaintiff is the natural father of Jessica Louise Linkous and Any Michael Linkous, Jr., who are minor children. Plaintiff is a physician who resides and practices medicine in the Southern District of Texas.

Honorable Charles Dean Huckabee is the elected judge of the 247th Judicial District Court of Harris County, Texas, which court has been assigned to preside

over the state court proceedings which give rise to this action.

Honorable Arthur C. Lesher is a retired judge who was appointed by the presiding judge of the Second Administrative Judicial District to preside over a hearing which resulted in deprivations of Plaintiff's fundamental liberty interests.

Donn C. Fullenweider is an attorney who represents Defendant Nancy L. Linkous in the referenced state court proceedings.

Don Fogo is an attorney appointed as an ad litem for the minor children in connection with the state court proceedings.

Muriel Flake is a court appointed counselor who has participated and is participating in the deprivations of

Plaintiff's fundamental liberty interests.

Nancy L. Linkous is Plaintiff's wife, and she, under color of state law, maintains custody of the two minor children, pursuant to state action.

Honorable Thomas Kenyon is the elected presiding judge of the 300 District Court of Brazoria County, Texas, however, said judge was appointed by the administrative judge of the Second Administrative Judicial District of Texas to preside over the divorce/custody case involving Plaintiff and Nancy L. Linkous.

Thomas Henderson is an attorney and member of the firm of Sheinfeld, Maley and Kay, and at all times material hereto, has been employed as bankruptcy counsel for Defendants Nancy Linkous and Fullenweider.

The 247th Judicial District Court of Harris County, Texas, is a duly constituted district court under the constitution and laws of the State of Texas, Harris County, Texas is within the Southern District of Texas.

FACTUAL STATEMENT

Plaintiff alleges, contends, charges and will show, as follows:

1. Plaintiff and Defendant Nancy L. Linkous, have been married since June 1, 1977, and are natural parents of Jessica Louise Linkous and Danny Michael Linkous, Jr., who are ages 8 and 7, respectively. On April 4, 1983, Defendant Nancy L. Linkous, through then counsel, Irving Stern, instituted an action for divorce against Plaintiff in the 247th Judicial District Court of Harris County, Texas, in cause number 83-28196, styled In the Matter of The Marriage of Nancy L.

Linkous and Danny M. Linkous, M.D., and In The Interest of Jessica Louise Linkous and Danny Michael Linkous, Jr., Minor Children.

2. The presiding judge was Honorable Bruce Wettman, who resigned in October 1983, after which Honorable Dean Huckabee, a Family Court master for several years, was appointed presiding judge of the 247th District Court.

3. In October 1983, custody became an issue and was requested by Plaintiff's then-attorney. A Jury fee was paid for trial by jury in December 1983. After custody became an issue, in October 1983, defendant Fullenweider made his appearance as lead counsel for Defendant Nancy Linkous. Defendant Don Fogo was appointed by the court, in November 1983, to act as attorney ad litem for the children during the pendency of the di-

vorce suit. In December 1983, Defendant Flake was apparently appointed by the court to interview the parties and children and report her findings to the court. She is a non-clinical psychologist, who is frequently appointed by the Family Courts in Harris County to make findings and recommendations relating to the ultimate issue of child custody.

4. Through numerous temporary orders, Defendant Nancy L. Linkous, was named primary custodian of the minor children. Plaintiff was named Temporary Possessory Conservator of the children, which is the secondary custodial parent under Texas law, with rights of visitation with the children during the pendency of the suit.

5. In early April, 1983, when Defendant Nancy Linkous filed for divorce and voluntarily left the family home, she

secretly took over $500,000.00 worth of municipal bonds, some of which were bearer bonds. Turnover of the bonds for use by the estate was requested of Defendants Nancy Linkous and Fullenweider by the State court by order signed on the 25th day of January, 1984. After Defendants Nancy Linkous and Fullenweider failed to relinquish the bonds, another State court order of March 19, 1984, ordered the bonds to be placed in a Goldman-Sachs Escrow Account. Because of the degree of difficulty in obtaining funds from the escrow account to pay bills, notes and carry on business of the estate, Plaintiff's estate had liens affixed, suits filed for default on notes and partnership contributions, and interest and penalties on back accrued and assessed taxes.

6. By reason of this conduct of Defendants Nancy Linkous and Fullenweider, Plaintiff was compelled to seek protection under Title 11, U.S.C. [Chapter 11 of the Bankruptcy Act], and on July 2, 1984, Plaintiff filed in the Bankruptcy Court for the Southern District of Texas, sitting in Houston, Texas, a Chapter 11 Petition. Such petition was filed because of imminent foreclosure on the marital home; default on certain partnership contributions; bounced tax shelters and other obligations owing to the Internal Revenue Service; assessments for taxes, penalties and interest impressed against the marital estate by the Internal Revenue Service; and creditors demands. Prior to the filing of the petition in the bankruptcy court, Plaintiff collapsed a Defined Benefits Plan and Money Purchase Trust Plan because

Defendant Nancy Linkous had appropriated approximately one-half million dollars of negotiable securities and bonds. The plans were collapsed to satisfy ongoing obligations of the marital estate, and Plaintiff, with a portion of said funds, invested in a certain piece of real estate known as 3102 Breezy Pines, Kingwood, Harris County, Texas. All attempts of Plaintiff to reconstitute the referenced plans were thwarted by Defendants Nancy Linkous and Fullenweider, which subjected the estate to further taxes, penalties and interest. The "Breezy Pines" property was purchased as investment and rental property, but the ongoing divorce difficulties relegated Plaintiff to live in this residence.

7. On December 19, 1984, the presiding judge of Plaintiff's bankruptcy proceedings admonished Plaintiff, Defen-

dants Nancy Linkous and Fullenweider, and all parties to refrain from further pursuit of State Court Domestic Relations proceedings. In January 1985, Defendants Nancy Linkous, through counsel and in concert with Defendants Fullenweider and Fogo, and with an intent to obstruct, impede and influence the due administration of justice of the U.S. Bankruptcy Court, circumvented the presiding bankruptcy, representing to said Judge Leal that an emergency existed which was jeopardizing the best interest and welfare of the children, and that irreparable harm would result if the bankruptcy stay was not relaxed. On January 30, 1985, Judge Manuel Leal, entered an order relaxing the automatic stay to allow the 247th District Court of Harris County, Texas, to proceed with non-property matters, including visitation and conservatorship

for the safety and welfare of the minor children.

8. Approximately one month later, on February 26, 1985, Defendant Fullenweider, apparently acting pursuant to the January 30, 1985, order of Judge Leal, and in concert with Defendant Nancy Linkous, and at her request, filed against Plaintiff in the 247th District Court, quasi-criminal proceedings alleging some 26 counts of contemptuous conduct against Plaintiff. On March 14, 1985, Plaintiff appeared in response to the contempt allegations in the 247th District Court, without counsel. Plaintiff was without counsel by reason of a direct admonition of the bankruptcy judge that Plaintiff should not hire counsel without the express permission and consent of the bankruptcy court. This situation was explained to Defendant Huckabee

by voluntary appearance of Plaintiff's bankruptcy counsel and a Family Law attorney, John Grubb, each appearing as friends of the Court. Plaintiff's bankruptcy counsel, through an amicus curiae brief, requested continuance so as to allow Plaintiff to obtain counsel through an emergency expedited motion then pending before the U. S. Bankruptcy Court. Defendant Huckabee stated that he didn't agree with the Federal Court's position and that the Federal Courts should not enter areas which he felt were not within their domain and denied all such requests and proceeded to hear contempt allegations against Plaintiff, pro se. Defendant Fogo appeared, apparently representing the children. Plaintiff requested a continuance because of lack of counsel, which was denied by Defendant Huckabee. Plaintiff pleaded with Defendant Huckabee

to allow even a 48 hour continuance to clarify the Federal Bankruptcy Court position and to allow Plaintiff an opportunity to obtain counsel for the contempt trial. Even in light of Defendants Nancy Linkous' and Fullenweider's urging for 6 months incarceration and $500.00 fine for each of the 26 quasi-criminal allegations, Defendant Huckabee still adamantly refused Plaintiff's request to be represented by counsel.

9. After two days of hearing before Defendant Huckabee, Plaintiff was not found guilty of any of the counts of contempt, and the entire proceeding was resolved in Plaintiff's favor. During the course of those contempt hearings, however, Plaintiff and Defendant Huckabee engaged in verbal arguments principally because Plaintiff was unwillingly representing himself and was unfamiliar with

the trial process. At the conclusion of the hearing, Defendant Huckabee, without sworn pleadings or affidavits, without notice, without hearing or an opportunity to be heard, and without good cause shown, although requested by Plaintiff, excluded Plaintiff's fundamental right of access to and possession of his children, and threatened Plaintiff with a jail sentence if he did not comply therewith. The order was orally pronounced from the bench on March 15, 1985, Defendant Huckabee citing § 11.11, Texas Family Code, as authority for same. § 11.11, Texas Family Code, expressly prohibits and forbids such conduct without sworn pleadings or affidavits, and Defendant Huckabee was aware of such prohibition or he should have reasonably known of same. Therefore, Defendant Huckabee, although acting under color of state law, was

acting in a total absence of subject matter jurisdiction, and in direct conflict with the prohibitions of § 11.11. Plaintiff will show that Defendant Huckabee was acting in the face of a clearly valid statute and case law which deprived him of jurisdiction to enter an order terminating Plaintiff's fundamental right to family integrity and a meaningful relationship with his children.

10. Plaintiff will further show that because of prior dealings with Plaintiff, Defendant Huckabee's action was done with an intent to punish, harass and retaliate against Plaintiff. Defendant Huckabee had previously jailed Plaintiff at the request of Defendant Flake for the reason that Defendant Flake's bill had not been paid. In this connection, Defendant Huckabee appointed his campaign treasurer, Mike Stocker, to

represent Defendant Flake in her prosecution of Plaintiff in this action on April 23, 1984. Efforts were subsequently made to conceal the fact that Defendant Huckabee had appointed Stocker. A state Court of Appeals released Plaintiff on an Application for Writ of Habeas Corpus.

11. Defendants Fullenweider's and Nancy Linkous' action in instituting quasi-criminal charges against Plaintiff was malicious and done with intent to damage and harm Plaintiff's relationship with his children, and to incite the conduct of Defendant Huckabee. Furthermore, Defendants Fullenweider's and Nancy Linkous' actions were in furtherance of their efforts to influence, obstruct and impede the due administration of justice in the United States Bankruptcy Court for the Southern District of Texas. the contempt charges dealt with allegations

that Plaintiff was being abusive of his visitation rights, including allegations that he was "cohabitating" with a female not his wife in the presence of the two children, and not with matters concerning the emergency welfare and benefit of the children, as represented to the Bankruptcy court.

12. Notwithstanding all of the foregoing, even prior to the referenced hearings, on March 11, 1985, Plaintiff, acting pro se, directed a letter to Defendant Huckabee requesting that he remove himself from further participation in this case.

13. Defendant Huckabee, then, entered a written order, dated March 19, 1985, denying Plaintiff access to and possession of his children on the very same day that Plaintiff filed a formal motion to recuse Judge Huckabee from

further participation in the case. Plaintiff believes, and therefore respectfully alleges, that the formal motion to recuse Judge Huckabee was filed with the District Clerk of Harris County, Texas, before the entry of the referenced order of defendant Huckabee. Attached hereto as a copy of Plaintiff's motion to recuse, and Plaintiff adopts the allegations and facts contained therein and incorporates same herein for all purposes. [Exhibit "A"].

14. Defendant Huckabee refused to recuse himself, therefore, on April 2 & 3, 1985, Plaintiff, who was still pro se because of the bankruptcy court's hearing, opposed by Defendant Fullenweider, which hearing was presided over by Judge Norman Lee, a former legal associate of the firm of Haynes and Fullenweider. Although the recusal was denied by Judge

Lee, retrial was granted by Judge Stovall, Presiding judge of the 2nd Administrative Judicial District because of multiple errors in the recusal procedures and trial. Defendant Huckabee again refused to recuse himself and only after an amended recusal was filed by Attorney James Murphy on September 3, 1985, did Defendant Huckabee voluntarily recuse himself on September 4, 1985.

15. The presiding bankruptcy judge, after hearing of the malicious unfounded 26 count contempt trial in State court, memorialized his prior December, 1984, admonition in writing by an April 24, 1985, order staying all state court proceedings.

16. After Plaintiff had been deprived of access to and possession of his children for almost two months, Plaintiff, with leave of the Bankruptcy

Court on May 1, 1985, first obtained, filed a motion on May 15, 1985, to lift Defendant Huckabee's order, alleging that same was unlawful, without authority and jurisdiction. Honorable Thomas Stovall, presiding judge of the administrative district, appointed Defendant Lesher to hear such motion on May 28, 1985, along with a motion filed on May 15, 1985, by Defendant Fogo. Once again, in direct violation of § 11.11, Texas Family Code, no sworn pleadings or affidavits were filed giving Defendant Lesher jurisdiction to further deprive Plaintiff of his fundamental liberty interests of right of access to and possession of his children and of family integrity and a meaningful relationship with his children. After a one-half day trial, without subject matter jurisdiction, Defendant Lesher entered an order continuing the termination

and suspension of all of Plaintiff's access to and possession of his children. Such order is dated June 4, 1985.

17. As further evidence of Defendant Huckabee's intent, Plaintiff will show that after Defendant Lesher was appointed by Judge Stovall to hear Plaintiff's motion, Plaintiff, through a private individual, attempted to serve a subpoena on Defendant Huckabee. On May 22, 1985, Defendant Huckabee arrested that individual and placed him in the custody of the Harris County Sheriff's department.

18. During this period of time Defendant Fullenweider wrote two letters to Plaintiff's hospital administrator and contacted his state medical board in order to harm Plaintiff's ability to pursue his profession.

19. As a consequence of the orders of defendant Huckabee and Lesher, Plaintiff was deprived of any access to his children from March 15, 1985, thru September 20, 1985. Another visiting judge, Solomon Casseb who was appointed by Judge Stovall on September 9, 1985, re-instituted Plaintiff's rights of access to and possession of his children, although diminished from all previous temporary orders.

20. None of the preceeding approximately 15 temporary orders specified holiday visitation and the orders were not only confusing, but were conflicting in detail, giving rise to numerous efforts to interpret same [on the part of Plaintiff and Defendant Nancy Linkous].

21. During the time of Plaintiff's non-access to his children, Defendant Flake, contrary to a previous

State and Federal court orders, continued to see the children, with a view to further destroying the parent-child relationship between Plaintiff and his children. Defendant Flake, acting in an advocate's role, as opposed to that of an independent counselor, continually and repeatedly saw, telephoned and spoke with the children, bought them gifts, ate dinner with them and their mother, Defendant Nancy L. Linkous, and spent an inordinate amount of time with them for the express purpose of ingratiating herself to them with a view to making the ultimate custody determination a foregone conclusion. Defendant Flake, acting in concert with Defendants Linkous and Fullenweider, under color of state law by virtue of her appointment by Defendant Huckabee, has attempted to turn the children's affections for Plaintiff

against Plaintiff by meeting with them, speaking with them about their father's absence from access to them, monitoring telephone conversations between Plaintiff and his children without permission from either party, all in an effort to deprive Plaintiff of meaningful access and possession prior to trial for custody.

22. Defendant Flake not only interrogated the children and attempted to brain wash them, but encouraged Defendant Nancy Linkous to remove the children from private school to public school without notification of Plaintiff, Plaintiff's counsel, or the attorney ad litem, Defendant Fogo until several days after school had started.

23. Defendant Nancy Linkous has threatened to change the children's names and move to a location where Plaintiff will never see them again. Indeed, De-

fendant Nancy Linkous has applied to move to Atlanta, Georgia, on May 7, 1985, and then again to Minnesota on August 21, 1985. Defendant Linkous has threatened Plaintiff with eventual destruction of his relationship with his children and his fundamental rights of access to and possession of his children.

24. Texas law prohibits any appellate review of "temporary orders" of the nature entered by Defendants Huckabee and Lesher. For approximately six months, in a time period crucial for preparation of a custody suit, Plaintiff was relegated to a total absence of contact with his children, and he was deprived of his fundamental liberty interests without due process of law. The conduct of Defendants Huckabee, Lesher, Fullenweider, Fogo, Flake and Nancy Linkous was designed to prevent Plaintiff

from access to his children during the pendency of the custody suit, with a view to making the ultimate determination of the custody issues a foregone conclusion in favor of Defendant Nancy Linkous.

25. Defendants Nancy Linkous and Fullenweider assisted by Defendant Henderson filed numerous motions and objections and adversarial non-dischargeability pleadings in the bankruptcy court with the intent to obstruct and delay the completion of the bankruptcy proceedings.

26. Furthermore, the conduct of Defendants, as alleged, in depriving Plaintiff of his fundamental liberty interests without due process was used by said defendants to leverage Plaintiff into a position of settlement by threatening Plaintiff with ultimate destruction of family integrity and Plaintiff's rela-

tionship with his children. All such conduct was done under color of state law, and said defendants were acting in concert with each other to deprive Plaintiff of his fundamental liberty interests and due process of law.

27. These events precipitated the original federal complaint against Defendants Huckabee, et al. on June 28, 1985, after bankruptcy court, leave was obtained over objections filed by Defendant Nancy Linkous, to allow Plaintiff to pursue his constitutional rights of access to and possession of his children.

28. Because of the continual obstruction and delay by Defendants of the chapter 11 proceedings and the improbability of its approval, conversion to chapter 7 was effected on July 12, 1985.

29. October 7, 1985, leave of bankruptcy court to hear the entire divorce was granted by Judge Wheless and divorce matters were heard by Judge Casseb for the second time on October 16, 1985. In this hearing Plaintiff was ordered to take a lien out on his automobile to pay child support, even though the bankruptcy trustee, through his attorney, had not exempted the automobile and stated that the automobile was the trustee's property. Attempts by Plaintiff to obtain a loan on the automobile were unsuccessful at several banks because of the issue of questionable ownership or title of the automobile. Any transaction of this nature would be construed to be a violation of the Federal Bankruptcy Court as a prohibitory transaction.

30. On October 23, 1985, this Court conducted a pretrial conference concerning this case wherein neither Defendant Fogo nor his counsel were present and Defendant Fullenweider was not present, although represented by counsel. Defendant Nancy Linkous was represented by the firm of Haynes and Fullenweider.

31. On November 12, 1985, another State visiting judge, Honorable Peter Curry, was appointed to hear the state divorce case with leave of bankruptcy court being granted on November 12, 1985. On the 1st day of this trial, prior to jury selection, Defendant Fullenweider ex-parted Judge Curry concerning Plaintiff and the case for self-serving purposes and to prejudice the court against Plaintiff. Judge Curry made a three day attempt to settle this case by conferences with the parties outside the presence

of their attorneys and agreement was reached on all issues except for payment of Defendant Fullenweider's attorney fees. Defendant Fullenweider refused to sever his fees as an issue from the case, thereby thwarting resolution of the divorce, custody and property. This forced the entire case to resolved by trial by jury of all issues.

32. During April 1986, Honorable Thomas Stovall, the presiding judge, appointed Honorable Thomas Kenyon to preside over the divorce/custody trial involving Plaintiff and Defendant Nancy L. Linkous. the case was placed on the jury docket to begin on May 5, 1986. Prior to jury selection, Plaintiff's trial counsel advised the Court that he had suffered an injury to his neck and shoulder approximately 10 days before the beginning of trial, and advised the Court

and other counsel that such injury might present a problem, but that counsel was willing to proceed with trial. On May 6, 1986, a jury was selected, empaneled, and sworn to hear this case. The jury was advised by Judge Kenyon that this case would require two weeks to complete. Beginning on May 6, 1986, Defendant Nancy L. Linkous, through Defendant Fullenweider, began presenting her case in chief to the jury. Defendants Nancy L. Linkous and Fullenweider presented testimony to the jury on May 7, 8, and 9, 1986. On the afternoon of May 9, 1986, counsel for Plaintiff, suffering from the preexisting injury, became physically debilitated to continue with trial before the jury, and the case was recessed for the weekend of May 10 and 11, 1986. On May 12, 1986, counsel for Plaintiff was still debilitated but appeared for con-

tinuation of the trial on May 13, 14, 15, 16 and 19. On May 20, 1986, the preexisting injury of Plaintiff's counsel exacerbated once again and Plaintiff's counsel was required to seek medical attention from Jose Tandoc, a specialist in EMG studies. On that same day, Plaintiff's counsel and Plaintiff appeared in the 247th District Court before Judge Kenyon and advised the Court that Doctor Tandoc had diagnosed Plaintiff's counsel as having a severe C-7 radiculopathy. The trial judge then recessed the case until May 27, 1986, so that Plaintiff's counsel could seek medical attention and advice and physical therapy, and so that the trial judge could attend a holiday family reunion. Plaintiff's counsel consulted with Dr. Andrew Kant, an orthopedic specialist, who confirmed Dr. Tandoc's diagnosis and

recommended cervical surgery if physical therapy did not remedy the situation. Plaintiff's counsel advised the Court of this fact and further sought an additional opinion from as specialist in neurology, Dr. Sung Rho at the Northeast Medical Center Hospital, who once again confirmed the previous diagnosis. Finally, on May 27, 1986, Plaintiff's, counsel under the relevant Disciplinary Rules of the State Bar of Texas (DR 5-110), moved the Court to continue the case for a period of two weeks so as to allow Plaintiff's counsel to rehabilitate himself without the necessity of surgery. The trial court denied such continuance, whereupon, Plaintiff's counsel moved for a mistrial which was also denied. Left with no other choice, Plaintiff's counsel moved to withdraw from further representation of Plaintiff in the case because his

physical and mental condition rendered it unreasonably difficult to carry out his employment with Plaintiff. Plaintiff and his counsel made every reasonable and diligent effort to secure other counsel to continue the case before the jury. Plaintiff will show on hearing that he and his counsel contacted over 20 attorneys, and obtained two affidavits from family law specialists in Harris County, Texas, which confirmed the impossibility of obtaining an attorney at such a late date without a substantial retainer and at least 30 days preparation. In light of the fact that approximately nine days of trial testimony before a jury had taken place, all counsel contacted indicated that they would need at least 30 days to familiarize themselves with the case along with a very extensive retainer, which Plaintiff did not have. On

Wednesday, May 28, 1986, Plaintiff was compelled to proceed to trial before a jury in a pro se capacity to begin with evidence in his case in chief.

33. On May 28, 1986, Plaintiff apprised the court of Jury misconduct by virtue of an imposter juror which was documented by juror qualification and juror information records. Defendant Kenyon refused to examine this juror or to discharge the jury even after urging by Plaintiff.

34. On this date Plaintiff called his first witness, Defendant Huckabee, who had been properly subpoenaed to the court. Defendant Huckabee failed and refused to appear. Plaintiff's Application for Writ of Attachment was heard by Defendant Kenyon and denied. This denied Plaintiff a crucial witness to refute the allegations of Defendants Nancy Linkous

and Fullenweider during her case in chief.

34. Defendant Huckabee, when served with a subpoena to appear as a witness on behalf of Plaintiff, threatened the security and well-being of the individuals who were attempting to deliver the subpoena.

36. Plaintiff, a medical doctor, objected strenuously to proceeding pro se, but because of fear of default, attempted to present his case through June 5, 1986. Plaintiff repeatedly informed the Court of his inexperience and inepti-tutde in law and trial procedure, and continually moved for continuances and/or mistrials so as to prevent prejudice to his case. All such motions and efforts on the part of Plaintiff were rebuffed by the trial court, and Plaintiff continued

to attempt to present his case through June 5, 1986.

37. Throughout Plaintiff's efforts to present his case, pro se, Plaintiff repeatedly entreated with the Court to allow a continuance to obtain counsel or to allow his former counsel to rehabilitate 'to the extent that he could reappear and assist Plaintiff in completing the trial. Such requests were repeatedly denied by the trial judge. In fact, Plaintiff petitioned the Court of Appeals of Texas for the 14th Supreme Judicial District and the Texas Supreme Court for a stay of the trial proceedings so as to allow Plaintiff to obtain counsel to assist him in presenting his case and allowing the case to go to verdict. These Petitions were denied.

38. On May 21, 1986, Defendants Nancy Linkous, Fullenweider, and Fogo,

without pleadings and on oral motion, moved the Court to impress a trust on the Breezy Pines property, purportedly for the benefit of Defendant Nancy Linkous and the children. Each said Defendant knew, or should have known, by reason of their participation in the bankruptcy proceedings, and by reason of previous default on the issue of title and ownership of the Breezy Pines property in the name of the trustee in Bankruptcy, that their efforts were designed to circumvent the authority and jurisdiction of the United States Bankruptcy Court.

39. An emergency was alleged by Defendant Nancy Linkous and her counsel, Defendant Fullenweider, that Defendant Linkous was to be evicted on June 1, 1986, from her then residence of the previous 18 months. This was the stated emergency for the appointment of trustee

Fogo which was orally pronounced on May 21, 1986, in court by Defendants Nancy Linkous, Fullenweider, and Fogo. No corroborating evidence of the eviction could be tendered by Defendants Nancy Linkous, Fullenweider, and Fogo. This was followed by the May 27, 1986, motion by Defendants Nancy Linkous, Fullenweider, and Fogo to vacate Plaintiff from the Breezy Pines residence with only his personal possessions to make way for occupancy by Defendant Nancy Linkous for her use during the pendency of this case.

40. On May 27, 1986, Defendant Kenyon, without prior notice to and/or approval of Plaintiff or his then-counsel, signed and entered an order naming Defendant Fogo as trustee of the 3102 Breezy Pines property, for the benefit of Defendant Nancy Linkous (and the

Linkous children) during the pendency of the divorce suit.

41. On June 3 and 4, 1986, during one-half day testimony each day, the issue was whether an emergency existed which would entitle the state court under § 11.11 to vacate Plaintiff from the Breezy Pines residence and allow occupancy by Defendant Nancy Linkous. Defendants Nancy Linkous, Fullenweider, and Fogo, with the assistance of Defendant Henderson, were allowed to put on their complete case. Plaintiff called Charles Long, the bankruptcy trustee's attorney, who refuted Defendant Henderson's testimony as to the position of the bankruptcy court in this regard, and confirmed that the appointment of trustee Fogo and occupancy by Defendant Nancy Linkous should not take place without bankruptcy court approval. Mr. Long stated that appropri-

ate actions would be taken in Federal Bankruptcy Court if the state court proceeded with this course of action. Plaintiff was denied the right to put on other witnesses who were present and desired to testify in opposition to the application of Defendants Nancy Linkous, Fullenweider, and Fogo. These included the Pension Plan beneficiaries who have a vested interest in the Breezy Pines property, an asset of the pension plan, and also several estate creditors who would be directly impacted upon by the state court's action. Breezy Pines residents, Gale Elliott and her 5 year old son, Eric Elliott were also present to testify against the application. Defendant Kenyon adamantly refused to allow Plaintiff time to present other witnesses or evidence in this matter.

42. No timely, proper notice was made by the Defendants or the state court to the Federal Bankruptcy Court, Bankruptcy Trustee or his attorney, Beneficiaries of the Pension Plan, Qualified estate creditors, or all Breezy Pines residents.

43. On or about June 4, 1986, the trustee in bankruptcy, through his counsel, submitted an emergency motion for temporary restraining order and/or preliminary injunction seeking to restrain the action contemplated by the order entered by Judge Kenyon. A true copy of such emergency motion is attached hereto and incorporated herein by this reference. [EXHIBIT B]

44. On June 6, 1986, upon application of Defendant Nancy Linkous, Defendant Don Fogo, and Defendant Donn Fullenweider, without notice to or the

presence of Plaintiff, Defendant Kenyon signed a order which ordered that possession of the Breezy Pines residence, then considered to be part of the bankruptcy estate involving Plaintiff, be delivered to Defendant Nancy Linkous on June 7, 1986, and Plaintiff was enjoined and restrained from interfering with the turnover of possession. A true and correct copy of said order is attached hereto and incorporated herein by this reference. [EXHIBIT C]

45. On June 7, 1986, Plaintiff was forced to vacate the property described in the referenced order on 24 hours notice of final order signed by Defendant Kenyon, which was never properly served on Plaintiff.

46. On Friday, June 13, 1986, Richard Johnston, C.P.A., on behalf of the Federal Bankruptcy trustee's attor-

ney, attempted to obtain the statement of facts of the State Court hearings with respect to the Breezy Pines residence takeover. Johnston was obstructed in his endeavors by the threat of Defendants Kenyon, and Fullenweider, and Fogo to impound any funds paid to any court reporter on behalf of Plaintiff or for his benefit or the benefit of the Federal Bankruptcy Court and bankruptcy creditors.

47. Without notice or hearing and by ex parte means, on June 6, 1986, Defendants Kenyon, Fullenweider, Fogo, and Nancy Linkous denied access to and possession of Plaintiff's children to Plaintiff for his regular period of possession, the weekend of June 6, 1986, to June 8, 1986, as set out in current temporary orders. Defendant Kenyon, without notice to Plaintiff or hearing, ordered

Defendant Fullenweider, on Defendant Fullenweider's urging, to prepare a "gag order" for possible use in this case. Other matters were discussed, ex parte, by these Defendants without notice to Plaintiff or his presence.

48. Through the week of June 9, 1986, Plaintiff continued to attempt to present his case, pro se, but Plaintiff was advised by Defendant Kenyon that Plaintiff's case would terminate on or about June 12, 1986, even though Plaintiff had not presented witnesses crucial to his case.

49. Plaintiff continued to implore Defendant Kenyon for counsel and continuance as he had no legal training and was inexperienced and inept and unwillingly pro se.

50. On June 12, 1986, Defendant Kenyon entered an order prohibiting

Plaintiff from presenting any further evidence in his behalf in connection with child custody and property matters involved in the state court divorce proceeding.

51. On June 16, 1986, Defendant Kenyon accepted all of Defendant Fullenweider's special jury issues and refused to submit any of Plaintiff's special issues as to form or substance. After an opportunity for Plaintiff to review the special issues, objections and/or corrections were to be made on June 17, 1986. Requests by Plaintiff, to Defendant Kenyon, about requirements to perfect Bills of Exception, were made by Plaintiff in order to preserve the record. Defendants Kenyon and Fullenweider stated that they were uncertain as to the proper way to handle the Bills of Exception in this case. Plaintiff proffered

the subjects of some of his Bills of Exception to the court reporter and requested that his previously submitted list of witnesses and relevant documents be included in the Bills of Exception.

52. On June 17, 1986, Plaintiff notified the clerk of the 247th District Court at 8:15 o'clock a.m., by telephone; and confirmed by telegram and mailgram; that Plaintiff was acutely ill and requested a continuance until Plaintiff recovered from his acute illness and was able to attend trial and proceed.

53. Then, in the absence of Plaintiff, on June 17, 1986, Defendant Kenyon deprived Plaintiff of his rights

* to call his other witnesses and give his own testimony;
* to hear and cross-examine the testimony of Defendant Fogo;

* to proffer his own special issues and present objections to the special issues of Defendants Nancy Linkous, Fullenweider and Fogo;
* to examine and object to the Charge of the Court; and
* to present his closing argument to the jury.

54. Additionally, in the absence of Plaintiff, on June 17, 1986, Defendant Kenyon charged the jury and submitted the case to the jury on special issues, after Defendant Fogo was allowed to present his case for attorney's fees and Defendant Fullenweider was allowed to present full closing arguments to the jury.

55. On the same day, June 17, 1986, the jury rendered its verdict which awarded custody of Plaintiff's two minor children to Defendant Nancy Linkous;

recommended child support in the amount of $17,500.00 per month against Plaintiff; awarded $239,000.00 to Defendant Fullenweider in attorney's fees, with contingent attorney's fees for the various appellate steps to be taken; found against Plaintiff for approximately $3,000,000 for an alleged fraud on the marital estate; awarded Defendant Nancy Linkous $500,000 in exemplary damages against Plaintiff; awarded Defendant Nancy Linkous $25,200 in back child support; awarded Nancy Linkous $500,000 for an alleged assault, including exemplary damages; awarded Defendant Nancy Linkous eighty five percent (85%) division of the community estate by Defendant Nancy Linkous and Plaintiff; and awarded Defendant Fogo the sum of $100,000 in attorneys fees, along with attorneys fees in

the event various appellate steps were taken.

56. Plaintiff was not notified of any of these decisions until later in the evening of June 17, 1986, when by-stander witnesses told Plaintiff that the proceedings had progressed to completion and verdict was rendered without his presence.

57. Plaintiff was denied hearing on pending motions submitted by Plaintiff in the course of the trial by Defendant Kenyon.

58. On Monday, June 23, 1986, Plaintiff learned that Defendant Kenyon signed a final judgment in this case on June 20, 1986, after said judgment had been prepared and approved by Defendants Fullenweider and Fogo, but without notice to or approval of Plaintiff. A true and correct copy of said final judgment is

attached hereto and incorporated herein by this reference. [EXHIBIT D] The attached motion for new trial is incorporated herein. [EXHIBIT F]

59. Defendant Nancy Linkous, in concert with and with the approval of Defendants Kenyon, Fullenweider, and Fogo, again excluded Plaintiff _____ to and possession of his children for the period of June 20 thr _____ further intentional and malicious deprivation of Plaintiff's f_____ to family integrity and a meaningful relationship with his children Plaintiff has no State remedy.

III.

CAUSES OF ACTION

FOR THE FIRST CAUSE OF ACTION

Plaintiff complains of the actions of Defendants Huckabee, Lesher, Kenyon, in their sua sponte deprivation of

Plaintiff's fundamental interests with respect to his possession of and access to his family as herein alleged, and Plaintiff requests the Court to declare said actions unlawful, and award him damages, costs and attorney's fees.

FOR A SECOND CAUSE OF ACTION

Plaintiff seeks damages from Defendants Fullenweider and Nancy Linkous for malicious prosecution, under the pendent claim doctrine.

FOR A THIRD CAUSE OF ACTION

Plaintiff seeks damages, costs, and attorney's fees against Fullenweider, Nancy L. Linkous, Fogo, and Flake for deprivations of Plaintiff's fundamental liberty interests, which are alleged hereinabove.

FOR A FOURTH CAUSE OF ACTION

Plaintiff seeks a temporary injunction against Defendants Fullenweider,

Linkous, Fogo, and Flake, prohibiting them from engaging in further civil rights deprivations against Plaintiff's fundamental liberty interests.

FOR A FIFTH CAUSE OF ACTION

Plaintiff requests that the Court make such temporary injunction permanent upon final hearing hereof.

FOR A SIXTH CAUSE OF ACTION

Plaintiff requests that the Court declare § 11.11, Texas Family Code, unconstitutional on its face and as construed and applied, because it allows state interference with a fundamental liberty interest during the course of an on-going controversy that alters the status quo of the family integrity and the parent-child relationship without due process of law and it does not allow any procedure or means by which such decisions can be reviewed to determine their

validity. Further, § 11.11 operates to deprive Plaintiff and those similarly situated of equal protection of law, as construed and applied.

FOR A SEVENTH CAUSE OF ACTION

Plaintiff alleges that Defendants 247th Judicial District Court of Harris County, Texas, Donn C. Fullenweider, Don Fogo, Nancy Linkous, Honorable Thomas Kenyon, and Thomas Henderson, acting individually and in concert with each other, have engaged in a pattern of racketeering activity, as defined in 18 U.S.C. § 1961; that the 247th Judicial District Court of Harris County, Texas constituted an enterprise, which was engaged in and affecting commerce; that each Defendant, acting under the auspices of the referenced enterprise, and within the pattern of racketeering activity, caused injury to Plaintiff in his busi-

ness and property, by reason of the foregoing conduct.

Plaintiff further alleges and charges, as part of the pattern of racketeering activity, as follows:

1. That beginning on or about, and after, May 21, 1986, during the pendency of Plaintiff's divorce action, Defendants Nancy Linkous, Fullenweider, Fogo, and Henderson made material representations to Defendant Kenyon, who was then acting as the presiding judge to the 247th Judicial District Court of Harris County, Texas, with respect to certain property that was then believed to be property of Plaintiff's bankruptcy estate;

2. The representations made by said Defendants included that Defendant Nancy Linkous would be evicted from her residence on June 1, 1986, and that the

children of the marriage of Plaintiff and Defendant Nancy Linkous would be thrown into the streets;

3. Said Defendants represented to Defendant Kenyon, acting judge of the 247th Judicial District Court of Harris County, Texas, that an emergency existed which would support and justify their representations;

4. No emergency existed;

5. The representations made by said Defendants with respect to the alleged emergency situation, and the status of the property involved, were false when made, in that no emergency existed, and such representations were material with respect to existing facts;

6. The misrepresentations of fact by said Defendants were made willfully and wantonly, and with the intent of circumventing Title 11 U.S.C.

Section 362 (dealing with automatic stays in bankruptcy proceedings) and with intent to harm Plaintiff, and with further intent to induce Defendant Kenyon to act thereon;

7. As a result of the referenced misrepresentations and/or omissions, Defendant Kenyon entered orders on May 27, 1986, and June 6, 1986, which effectively circumvented Title 11, U.S.C. § 362 [copies of the referenced orders are attached hereto and incorporated herein as EXHIBITS C and E];

8. As a result of each of the aforementioned Defendants' actions, Plaintiff, his creditors, and beneficiaries of the pension plan which Plaintiff represents, have suffered damage, harm, and injury, all in violation of 18 U.S.C. Section 1962 (c), Section 1964 (c);

9. Plaintiff alleges and charges that the foregoing conduct on the part of each of said Defendant constitutes a predicate act of "Racketeering activity", as defined in under 18 U.S.C. Section 1961;

10. On or about June 7, 1986, Plaintiff vacated the Breezy Pines premises, pursuant to Defendant Kenyon's order;

11. On or about June 13, 1986, and within ten years of the preceeding act of Racketeering activity, Plaintiff will show that Richard Johnston, C.P.A., approached the Court Reporter of the 247th Judicial District Court of Harris County, Texas, to request and obtain a statement of facts relating to the Racketeering activity described above. In furtherance of and associated with the enterprise, Defendants Fullenweider,

Nancy L. Linkous, Fogo, and Kenyon did, in violation of 18 U.S.C. Section 1503, by communications and influences, obstruct, impede, and endeavor to influence, obstruct and impede the due administration of justice of the United States Bankruptcy Court for the Southern District of Texas, sitting in Houston, Texas, by the following acts:

a. threatening Richard Johnston;

b. impeding the acquisition of facts which would reflect a fraudulent interference with the jurisdiction and power of the United States Bankruptcy Court for the Southern District Texas in violation of 11 U.S.C. Section 326; and

c. all of which constitutes the second predicate act of Racketeering activity, within the meaning and definition of 18 U.S.C. Section 1961.

12. As alleged in paragraph number twenty-one, of the factual statement herein, Defendant Flake in concert and combination with Defendants Nancy L. Linkous and Fullenweider, monitored telephone conversations between Plaintiff and his children without permission from either party, all in furtherance of the scheme to deprive Plaintiff of his constitutional rights enumerated herein. Such conduct was in violation of 18 U.S.C. Section 1343 (Wire fraud) and, as such, constitutes a predicate act of Racketeering activity, within the meaning and definition of 18 U.S.C. Section 1961.

13. Plaintiff will further show, that at all times material hereto, Defendants engaged in the activities described herein by use of the interstate communication of the telephone system in furtherance of the scheme particularly de-

scribed herein, in violation of 18 U.S.C. Section 1343, which constitutes an additional predicate act of Racketeering activity, within the meaning and definition of 18 U.S.C. section 1961.

14. Throughout the entire course of the proceedings which are described in this amended complaint, the Defendants, and each of them, made use of the mails in violation of 18 U.S.C. Section 1341, in furtherance of the scheme described herein. More particularly, on or about June 20, 1986, the Defendants, in concert with each other, caused to be mailed to Plaintiff the Decree of Divorce which includes, among other things, the cloud on the title to the Breezy Pines property. Such act in particular constitutes an additional predicate act of Racketeering activity within the meaning and definition of 18 U.S.C. Section 1961.

15. Said defendants conducted and participated, directly and indirectly, in the conduct of the "enterprise's" affairs, through a pattern of Racketeering activity, which consisted of at least two Racketeering activities, all of which is a violation of 18 U.S.C. § 1962(c).

16. Plaintiff further alleges that the enterprise consists of the 247th Judicial District Court of Harris County, Texas; and that through said enterprise, an alternative enterprise existed consisting of the referenced individual Defendants associating with each other in fact;

17. With the exception of the 247th Judicial District Court of Harris County, Texas, each of the named Defendants in this cause of action were "persons" operating and conducting the enterprise;

18. That by the pattern of activity described herein, including the purpose of said acts, the timing involved, the methods employed, and the intent to harm and damage Plaintiff, the activities of the "enterprise" affected interstate commerce, to the detriment and injury of Plaintiff, Plaintiff's bankruptcy estate, his creditors and the beneficiaries under the Defined Benefit Plan and the Money Purchase Trust Plan;

19. Plaintiff further alleges that Defendants Nancy Linkous, Fullenweider, Fogo and Henderson, beginning on or about May 21, 1986, and through June 17, 1986, did agree with each other to commit the foregoing acts described as "Racketeering activity," in violation of 18 U.S.C. § 1962(d).

20. Plaintiff further alleges and will show that on June 20, 1986, Defen-

dant Kenyon, acting presiding judge of the 247th Judicial District Court of Harris County, Texas, signed a judgment [a copy of which is attached hereto], at the request and instance of Defendants Fullenweider and Fogo, which set aside the Breezy Pines property as Defendant Nancy Linkous' sole and separate property, and attempted to divest Plaintiff, his creditors, the bankruptcy estate, and the beneficiaries of his pension plan or any right, title, interest, and claim in and to such property. Reference is made to pages 13 and 14 of the "Decree of Divorce." Plaintiff alleges that the signing of said judgment creates a cloud on the title to the Breezy Pines property, and such action is an additional act of Racketeering activity within the preview of 18 U.S.C. § 1961.

FOR AN EIGHTH CAUSE OF ACTION

Plaintiff contends and alleges that because of the foregoing facts recited above, the state trial was so fundamentally unfair that the judgment rendered thereon violates the due process clause of the 14th Amendment to the United States Constitution.

FOR A NINTH CAUSE OF ACTION

By its very terms, the Decree of Divorce has impressed a judgment lien against all of Plaintiff's assets, including many assets that are being held by the trustee in Plaintiff's bankruptcy action. Furthermore, the Decree of divorce allows execution on the various judgments that were rendered therein. Moreover, as hereinabove alleged, Defendants Fullenweider, Fogo, and Kenyon have threatened that if Plaintiff seeks to obtain any statement of facts for purpos-

es of appeal or otherwise, any funds paid to any court reporters would be impounded by the 247th Judicial District Court of Harris County, Texas, to satisfy child support obligations. Under Texas law, only a supersedeas bond and other security given by Plaintiff would prevent execution of the Decree of Divorce or impounding funds for the purpose of obtaining a statement of facts on appeal. Thus, the application of the supersedeas bond and lien provisions of Texas law effectively precludes Plaintiff from exercising his right to appeal in the Texas courts, and, necessarily, to petition for certiorari to the United States Supreme Court, all in violation of the Due Process and Equal Protection Clauses of the 14th Amendment to the United States Constitution. As hereinafter alleged, Plaintiff seeks a temporary

restraining order and preliminary injunction to enjoin and restrain the Defendants from taking any action to enforce or attempt to enforce the Decree of Divorce entered by the 247th Judicial District Court of Harris County, Texas.

IV.

ANTI-INJUNCTION STATUTE AND ABSTENTION

This suit seeks to redress deprivation under color of state law rights secured to Plaintiff by the Constitution and the Laws of the United States of America. The anti-injunction statute, 28 U.S.C. § 2283, which provides that a federal court may not enjoin a state proceeding "except as expressly authorized by an act of Congress" is inapplicable by reason of the expressed provisions of 42 U.S.C. § 1983, et. seq.; and 18 U.S.C. § 1961, et. seq.

Plaintiff further alleges, and will show upon hearing, that abstention is inappropriate in this case for the following reasons:

1. The underlying state court proceeding has proceeded to verdict;

2. Plaintiff has been forced to proceed pro se by reason of medical disability of his long-standing counsel;

3. that the actions in the state court have been pursued in bad faith, motivated by a desire to harass Plaintiff and in retaliation of the filing of this suit to redress deprivation of rights secured to Plaintiff by the First, Fifth, and fourteenth Amendments to the United States Constitution; and that Plaintiff, by reason of the conduct on the part of the Defendants alleged hereinabove, has been deprived and will be deprived of an opportunity to present his federal con-

stitutional claims in the state court proceedings; and

4. by reason of the action of the named Defendants herein, Plaintiff is clearly barred, absent a statement of facts, from interposing his constitutional claims in the state court proceedings. Plaintiff alleges that the conduct of the state judiciary, in light of the foregoing allegations, was such that it in fact denied him an opportunity to be heard on matters of state and/or federal matters that were within the preview of corrective state action, in light of principles of constitutional law. Plaintiff has been denied an opportunity to press his constitutional claims in the state courts.

V.

LACK OF IMMUNITY OF DEFENDANTS HUCKABEE, LESHER, AND KENYON

As alleged above, defendants Huckabee, Lesher, and Kenyon did not have subject matter jurisdiction to deprive Plaintiff of his fundamental liberty interest, and each Defendant judges' conduct was an action in the face of a clearly valid statute and case law which expressly deprived them of jurisdiction. Their protection of absolute judicial immunity was therefore lost by each of them.

VI.

LACK OF IMMUNITY OF DEFENDANT FOGO

Defendant Fogo would be entitled at best to assert a qualified immunity. Any immunity is lost if he acts beyond the scope of his duties. See, Imbler v. Pachtman, 96 S. C. 984 (1976). Further-

more, any good faith immunity is an affirmative defense.

VII.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pending trial of the issues raised in the amended complaint, Plaintiff respectfully seeks an immediate temporary restraining order, and, after hearing, a preliminary injunction, prohibiting each of the said Defendants, their employees, agents, attorneys, and servants from taking any action of any kind whatsoever to enforce or attempt to enforce the Decree of Divorce entered on June 20, 1986, by Defendant Kenyon, as presiding judge of the 247th Judicial District Court of Harris County, Texas, a copy of which has been attached to this complaint, including, without limitation, attempting to obtain or file any judg-

ment, liens, or abstract of judgment related to the decree of Divorce, or initiating or commencing any steps to execute on said Decree of Divorce. Plaintiff shows by the foregoing facts, that unless a Temporary Restraining Order is issued, and thereafter made a Preliminary Injunction, Plaintiff will suffer irreparable injury to his bankruptcy estate, his creditors, beneficiaries of pension plans, and to his right to appeal the Decree of Divorce; the jurisdiction of the United states Bankruptcy Court for the Southern District of Texas will be subverted; Plaintiff's business and personal assets, from the very fact of the Decree of Divorce and its intent, are under immediate threat of liquidation, all of which shows irreparable harm and injury for which Plaintiff has no adequate remedy at law. Plaintiff further

contends that based on the facts alleged herein, and facts to be shown at hearing hereon, a direct appeal from the Decree of Divorce entered on January 20, 1986 is not frivolous, and Plaintiff has shown a substantial likelihood of success on any number of the non-federal points for appellant review in the courts of Texas or on a petition for certiorari to the Supreme Court of the United States. Furthermore, Plaintiff has demonstrated herein, and will show on hearing, that he has been heretofore denied the fundamental requisites of Due Process in that he has been denied an opportunity to be heard in the state trial court, and based upon the Decree of Divorce and the previous threats of impounding funds for court reporters notes and statement of facts, Plaintiff's avenues of appeal are effectively closed, or will be closed, impend-

ing Plaintiff's open and equal access to the courts. Plaintiff contends that the Texas supersedeas bond provisions, combined with the immediate enforcement of the Decree of Divorce and its tenor enforcement provisions, effectively bars Plaintiff's meritorious appeal. To take an appeal to a Texas court without a statement of facts or assets to pursue obtaining a statement of facts, would be meaningless. Moreover, Plaintiff, a practicing physician, would be effectively hamstrung in his profession and business if the enforcement provisions of Texas law and the Decree of Divorce are not restrained and enjoined. Moreover, the public interest would be furthered, or at least not appreciably damaged, by this court granting the Temporary Restraining Order and Preliminary Injunc-

tion with respect to the alleged subversion of the Bankruptcy Act.

Plaintiff further alleges that the orders of the 247th Judicial District Court which placed the Breezy Pines property in trust, relegated possession to Defendant Nancy Linkous, and ultimately, in the Decree of Divorce, set aside such asset as the sole and separate property of Defendant Nancy Linkous, threatens to nullify the authority and power of the United States Bankruptcy Act.

WHEREFORE, PLAINTIFF prays that his request for a Preliminary Injunction be set for hearing as soon as practically possible consistent with the court's docket; that a Temporary Restraining Order issue immediately upon order to show cause; that, upon hearing, a Preliminary Injunction be issued directed toward Defendants consistent with the alle-

gations contained in this complaint; and that upon final hearing, Plaintiff recover damages, costs, and attorneys fees, and such relief to which he shows himself justly entitled.

Respectfully submitted,

JAMES M. MURPHY
STATE BAR OF TEXAS #14700800

/s/
Renaissance Place - Suite 340
714 Jackson Street
Dallas, Texas 75202
(214) 745-1532 /
(214) 742-2370

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing Second Amended Complaint, along with the Motion for Leave to file same, was served on all existing attorney's of record, as reflected in the attached service list,by depositing same in the United States

Mail, postage pre-paid, on this 25th day of July, 1986.

/s/ _____
JAMES M. MURPHY

SERVICE LIST

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917 FRANKLIN AT MAIN
HOUSTON, TEXAS 77002

JIM MATTOX, ATTY GEN. OF TEXAS
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AUSTIN, TEXAS 78711-2548

DONALD PETER FOGO
1112 SOUTH RICHEY
PASADENA, TEXAS 77506

NANCY L. LINKOUS
3102 BREEZY PINES COURT
KINGWOOD, TEXAS 77339

HAYNES & FULLENWEIDER
ATTN: CLINARD HANEY
4300 SCOTLAND STREET
HOUSTON, TEXAS 77007

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Dan M. Linkous, known to me to be the person whose signature appears hereinafter, who, after being duly sown stated upon his oath as follows:

> "My name is Dan M. Linkous. I am the Plaintiff in the entitled and numbered cause. I have personal knowledge of the matters of fact and allegations contained in the foregoing Second Amended complaint, and such allegations are true and correct, according to my knowledge"

_____
DAN M. LINKOUS, AFFIANT

SUBSCRIBED AND SWORN TO before me on this, the _____ day of July, 1986.

_____
Notary Public in and for
The State of Texas

FILED
JAN 17 1991
JOSEPH F. SPANIOL, JR.
CLERK

(5)

NO. 90-774

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

DAN M. LINKOUS,
Petitioner

v.

THOMAS J. STOVALL, et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Muriel Flake

QUESTIONS PRESENTED FOR REVIEW

Respondent Muriel Flake, pursuant to Sup.Ct.R. 24.2 and 15.1, wishes to call to the court's attention that, although the questions presented for review by Petitioner Dan Linkous all complain of procedural rights denied him by the United States District Court or the United States Court of Appeals for the Fifth Circuit, Petitioner can present no record for review that supports or even addresses his personal narrative and hearsay references. The absence of any record regarding his complaints against the judges below prevents Petitioner from proving virtually all of his allegations before this Court.

Petitioner presents five questions for review. Distilling their essence from the argument and repetition, consistent with Sup.Ct.R. 14-1(a), suggests that the following two questions are presented for review by Petitioner:

1. Did the District Court and the Court of Appeals follow the Federal Rules of Appellate Procedure in handling Petitioner's appeal?

2. Did any failure of the District Court or Court of Appeals to follow the Federal Rules of Appellate Procedure regarding access to and transmission of the record justify Petitioner in not meeting the deadline given to file his brief on appeal?

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NO. 90-774

IN THE

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OCTOBER TERM, 1990

DAN M. LINKOUS,
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v.

THOMAS J. STOVALL, et al.,
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To the Honorable Supreme Court of the United States:

Comes now Muriel Flake, Respondent (Defendant/Appellee below), and would show the following in opposition to the Petition for Writ of Certiorari:

JUDGMENT BELOW

The "Opinions Below" section of Dan Linkous' petition contains both argument and attempted supplementation of the record through Petitioner's own assertions. Respondent cannot go outside the record in

response, and asks that only the statements supported by the appendix be considered. Petitioner's discussion of the opinions and orders in the courts below is an impermissible substitution of after-the-fact briefing avowals for contemporaneous actions, of record, presenting the complaints now made and putting the lower courts in a position to act upon them.

APPLICABLE RULES OF APPELLATE PROCEDURE

Respondent Muriel Flake supplements Petitioner's reproduction of the content of the "Constitution, Statutes, Rules, and Treaties Involved" with the following verbatim text of certain Federal Rules of Appellate Procedure and Local Rules of the United States Court of Appeals for the Fifth Circuit that are also applicable to the issues presented:

Fed.R.App.Proc. 31. Filing and Service of Briefs

(a) Time for Serving and Filing Briefs. The appellant shall serve and file a brief within forty days after the date on which the record is filed. . . .

(c) Consequence of Failure to File Briefs. If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. . . .

Fed.R.App.Proc. 26. Computation and Extension of Time.

(b) Enlargement of Time. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or permit an act to be done after the expiration of such time. . . .

Fifth Circuit Internal Operating Procedure pertaining to Fed.R.App.Proc. 26.

> Extensions of Time—The Court's policy requires the timely filing of all papers within the period of time allowed by the rules, without granting extensions of time, except in those circumstances where it is shown to be impossible to file the necessary document on time. Failure to process appeals timely will cause such cases to be promptly dismissed for want of prosecution, without further notice, under the provisions of Loc. R. 42.

Fifth Circuit Loc.R. 42.3.2.

> In all other appeals when Appellant fails to order the transcript or fails to file a brief or otherwise fails to comply with the rules of the Court, the Clerk shall enter an order dismissing the appeal for want of prosecution.

Fifth Circuit Loc.R. 30.1 Appendix—Appeals from District Courts and the Tax Courts.

Appeals from District Courts and the Tax Court shall be on the original record without requirement of the appendix prescribed by FRAP 30. At the time of filing appellant's brief, appellant shall file 4 copies of the following portions of the district court record, to be bound together, but not in the brief:

> The docket sheet;
>
> The judgment or interlocutory order appealed from;
>
> Any supporting opinion, findings of fact or conclusions of law filed or delivered orally by the district court.

Such copies shall be reproduced on white paper by any duplicating or copying process capable of producing a clear black image, with a cover sheet bearing the case number and style and captioned "Record Excerpts". . . .

Fifth Circuit Internal Operating Procedures
under Loc.R. 30.1—

Optional Contents—

Appellant may add to the mandatory Record Excerpts brief extracts from the pleadings, charge, transcripts or exhibits raised. . . .

The fact that parts of the record are not included in the record excerpts shall not prevent the parties or the Court from relying on such parts. The Court will have before it the entire original record when making its decision. . . .

Petitioner has not accurately punctuated, and has possibly deleted relevant portions of, Loc.R. 11.2 of the Fifth Circuit, which is reproduced in its entirety below:

Local Rule 11.2. Duty of the Clerk.

It is the responsibility of the clerk of the district court to determine when the record on appeal is complete for purposes of the appeal. Unless the record on appeal can be transmitted to this Court within 15 days from the filing of the notice of appeal or 15 days after the filing of the notice of appeal or 15 days after the filing of the transcript of trial proceedings if one has been ordered, whichever is later, the clerk of the district court shall advise the Clerk of this Court of the reasons for delay and request an enlarged date for the filing thereof.

STATEMENT OF THE CASE

Petitioner's 25-page "Statement of the Case" is not "concise," as required by Sup. Ct. R. 24.1(g). Far from being "free from burdensome, irrelevant, immaterial, and scandalous matter" as required by Sup. Ct. R. 24.6, it primarily consists of such matter. Even worse, Petitioner's "Statement of the Case" is almost entirely outside the

record. Petitioner makes (here) not the slightest effort to cite even the documents compiled in the appendix to his own petition. Briefing references to statements and actions of a trial judge, not found in the record, are an unacceptable means of bringing supposed "facts" before a reviewing court. *Warner Brothers, Inc. v. Dae Rim Trading, Inc.*, 877 F.2d 1120 (2nd Cir. 1989).

This Court can, for the purpose of measuring compliance with Sup. Ct. R. 24.1(g), suppose that the "relatively inaccessible" record that Petitioner complains of (Pet. 3) was *completely* denied him by the courts below, yet still take note of Petitioner's ability to cite specific pleadings, court orders, and other documents necessarily prepared or received by him or his former counsel, and readily conclude that Petitioner could have offered this Court at least some form of citation to the record for any portions of his "Statement of the Case" that might be supported by the record. Even allowing for the venting of frustrations by a *pro se* plaintiff convinced of his unjust treatment, Petitioner's "Statement of the Case" should be largely disregarded. The problem is not so much that if contains name calling, defamation, hearsay references, personal narrative, personal beliefs, and demands for change in our legal system. Such matters can simply be disregarded. The probem with Petitioner's "Statement of the Case" is that it contains little else.

Respondent Muriel Flake ran afoul of Petitioner when serving as a court-appointed psychologist in his divorce and child custody lawsuit. (Pet. A. 10). Petitioner sued her in the underlying District Court lawsuit, but the District Court dismissed all causes of action except the RICO allegations against certain defendants, as then

stated in Petitioner's Amended Complaint. (Order excerpted at Pet. A. 9). On July 3, 1989, the District Court signed an order clarifying that Muriel Flake, although not specifically named among the parties dismissed by the order of October 16, 1987, was meant to be dismissed, and that her dismissal was effective with that prior order. (A. 1).

SUMMARY OF ARGUMENT

Petitioner received an adverse divorce and child custody judgment in state District Court in Texas, which he sought to overturn by filing a lawsuit in United States District Court, also in Houston, Texas, in which he sued the judges, court-appointed counselor, and guardian ad litem involved in resolving the dispute, and also sued his wife's divorce attorney and his wife's bankruptcy attorney characterizing the actions of them all as violations of his civil rights under 42 U.S.C. 1983 and 1985. (see Complaint in appendix to co-Respondent's brief). Petitioner also sought to declare a Texas Family Code provision unconstitutional. The District Court indulged Petitioner longer than required, even allowing him to plead RICO causes of action against his opponents, before finally dismissing his lawsuit pursuant to Fed.R.Civ.Proc. 11. That decision is well supported by the pleadings and applicable standards, as briefed by co-Respondents. The lack of merit in Petitioner's appeal rendered it subject to summary dismissal at any point when the Court of Appeals examined Petitioner's pleadings and the action taken in response to them.

The District Court, in furtherance of its responsibility to identify and order payment of the costs that Petitioner had unjustly imposed upon Respondents, retained

the record while the appeal was pending, certifying its partial transmittal in accordance with Fed.R.App.Proc. 11(e). Far from putting Petitioner at a disadvantage after his briefing timetable began to run, the presence of the record in Houston, the lawsuit forum and Petitioner's city of residence, left the record more accessible to him than it would have been in New Orleans.

Even if Petitioner had promptly asserted his present complaint that the record was "made relatively inaccessible to" him (Pet. 3), and neither the District Court nor the Court of Appeals had given him any relief, that still would not have prevented him from filing a brief that was complete except for the page numbers of his record references.

Finally, if Petitioner's ability to prepare a brief was negated by lack of record access, a Court of Appeals could reasonably expect something more from him than inaction for the first 39 of his 40 briefing days. A Court of Appeals, especially considering the Fed.R.Civ. Proc. 11 matters in issue in this case, could reasonably deny an extension of time to a litigant who neither complained of record inaccessibility until the day his brief was due, nor showed that the complaint was not pretextual by submitting a brief that was complete *except* for the page numbers of record references.

ARGUMENT

I. The District Court properly retained the record on appeal, pending resolution of post-trial motions, pursuant to Fed.R.App.Proc. 11(e).

Appellate interpretation of Fed.R.App.Proc. 11(e) is scant and does not address the circumstances presented

in this case. Giving Fed.R.App.Proc. 11(e) a reasonable, rather than an unduly restrictive, reading is all that prior decisions would presumably have done, if they existed. Ruling on Petitioner's motion for the district Court to "Show Authority" for its continued handling of motions after receiving plaintiff's Notice of Appeal, the District Court signed a May 24, 1990 order identifying the subject of those sanctions motions (A. 2) and noting that its rulings on "all pending post-judgment motions" were made "at the request of the Court of Appeals." (A. 3).

The need to rule on pending post-trial motions, such as for sanctions associated with the dismissal under Fed. R.Civ.Proc. 11, presents an excellent example of an occasion when "the record or any part thereof is required in the District Court for use there pending the appeal." Petitioner includes in his appendix several letters from the clerk of the District Court to the clerk of the Fifth Circuit stating that transmission of the record to the Fifth Circuit was being delayed due to pending motions (Pet. A. 39, 40, 41, 43, and 48). Petitioner's appendix also demonstrates that the Court of Appeals made the appropriate request to the District Court that it retain the record pursuant to Fed.R.App.Proc. 11(e), by twice asking the District Court to transmit a "Partial Record." (Pet. A. 42, 47). The District Court's transmittal of the partial record to the Court of Appeals was via two transmittal letters, with the contents of one identified as "partial record *per your request*" (Pet. A. 44), and the other (nine days later) as "partial record on appeal 'per your letter'." (Pet. A. 46).

If such plain communications could leave any doubt, it must be erased by the April 13, 1990 briefing notice

sent to Petitioner himself, which stated as a postscript: "The record on appeal is being retained in the District Court. *Partial* Record on appeal has been filed on this date." (Pet. A. 45). All of the foregoing communications are signed by a deputy clerk for the United States District Court on the letterhead of that court, or by a deputy clerk for the United States Court of Appeals on the letterhead of that court. Unless Petitioner is suggesting that the District Court and the Court of Appeals cannot act through their clerks, but instead judges must personally communicate by letter about transmission of the record in pending cases, then it is obvious that the District Court ordered and the Court of Appeals approved keeping the record in the District Court on appeal while sanctions motions remained pending.

II. Retention of the record on appeal in the District Court, even if it were a violation of Fed.R. App.Proc. 11, did not prevent Petitioner from filing his brief and could have had only the slightest effect, if any, on the content of the brief.

Dan Linkous' Petition for Writ of Certiorari with accompanying appendix is both proof that he could have filed his brief on appeal without any access at all to the record, and an indication of how small a role the documents making up the record have in his argument for relief. First, Petitioner presents only the feeblest of reasons, if any at all, for failing to file his brief, preferring instead to attack the District Court and Court of Appeals as supposed agents of Respondents. Petitioner's *ad hominem* attacks cannot substitute for a showing that he was prevented from filing, or at a minimum greatly impaired in the

preparation of, his appellant's brief. The Fifth Circuit's Internal Operating Procedures under Fed.R.App.Proc. 26, of which Petitioner was charged with knowledge, informed him that the Court of Appeals requires filing of all documents within the periods provided by the rules and without extensions of time, except "where it is shown to be impossible to file the necessary document on time." The Court of Appeals' briefing notice to Petitioner reiterated Internal Operating Procedures in telling him: "Failure to have access to the record will not be considered grounds for extending the time." (Pet. A. 19).

Preferring a moving docket over one scheduled by the litigants, the Court of Appeals gave clear notice that an already-discretionary enlargement of time under Fed.R. App.Proc. 26(b) might be expected to turn on whether a party seeking relief could have filed what he was charged with filing. Petitioner was capable but unwilling, as the content of the record was well within his grasp.

This Fed.R.Civ.Proc. 11 case contains no transcript of trial proceedings to which Petitioner can claim a lack of access. The record on appeal necessarily consisted of documents filed by Petitioner himself, documents filed by opposing parties and delivered to Petitioner, and rulings of the courts below, also delivered to Petitioner. Since Loc.R. 30.1 of the Fifth Circuit requires that separately bound "Record Excerpts" accompany appellant's brief, and Fifth Circuit Internal Operating Procedures under that rule (printed and available as part of the Local Rules) allow an appellant preparing Record Excerpts to include "brief extracts from the pleadings, charge, transcript or exhibits if they are essential to an understanding of the issues raised," Petitioner not only could have, but was *expected to*, cite relevant documents on appeal by refer-

ring to his own page numbering of documents accompanying his own brief. That he could have easily have done so is illustrated further by his having done so with his appendix accompanying the petition before this Court.

III. Even if Fed.R.App.Proc. 11 were violated, and Petitioner's ability to prepare a brief was substantially affected, Petitioner's failure to seek an extension of his briefing deadline until the day his brief was due, coupled with his failure to timely file a brief complete *except* for page numbers of the record, left it well within the Court of Appeals' discretion to dismiss his Appeal for failure to file a brief.

Petitioner's argument to this Court, if separated from all attacks on persons and institutions, and from statements outside the record, is that he did not have to file a brief on the deadline given him by the Fifth Circuit because the District Court and the Fifth Circuit did not follow applicable Federal Rules of Appellate Procedure regarding the record, which rendered his briefing date invalid. Whatever weight this argument might have had if Petitioner had made it reasonably soon after being given a briefing schedule, it can surely be rejected when it is first made forty days after the issuance of the briefing schedule, on the day Petitioner's brief was due. Taken separately, Petitioner's ability to file a brief lacking at most a few page numbers, and his waiting until the due date for his brief to raise a complaint about access to the record, each seems sufficient to allow a court to conclude that Petitioner simply ignored his obligation to file his brief and then sought last-minute relief. Taken together, those two circumstances greatly increase the probability that such is the case.

The United States Courts of Appeals have repeatedly held that litigants who fail to meet deadlines imposed by the Federal Rules of Appellate Procedure or the Local Rules of a given Circuit are subject to ultimate procedural sanctions, such as dismissal. *Connecticut General Life Ins. Co. v. Chicago Title & Trust Co.*, 690 F.2d 115 (7th Cir. 1982); *Taylor v. S&D Enterprises, Ltd.*, 601 F.2d 175 (5th Cir. 1979); *Julien v. Zeringue*, 864 F.2d 1572 (Fed. Cir. 1989); *Guam Sasaki Corp. v. Diana's Inc.*, 881 F.2d 713 (9th Cir. 1989). Appeals are also properly dismissed for filing an essential document, such as an appendix to a brief, that does not comply with a Circuit's Local Rule. *Kushner v. Winterthur Swiss Ins. Co.*, 620 F.2d 404 (3rd Cir. 1980). Such cases merely apply on appeal the standards that district courts have repeatedly been authorized to apply to litigants who fail to meet their procedural obligations in district court. Fitting for this case is *Kushner*'s observation that the litigant who appeals the supposed procedural error of the district court should take care to follow the rules on appeal, because "sauce for the goose is sauce for the gander." *Id.* at 407.

Petitioner's argument implies, unless he is to be treated as a special case, that a litigant who believes (even correctly) that a district court has committed a procedural error is thereafter excused from compliance with all later obligations that the applicable rules of procedure impose upon him relating to the subject of the court's error. If Petitioner does not present a special case, then he had an obligation to either seek relief earlier in the hope of not having to prepare a brief, or else file the best brief possible to accompany any last-day request for further relief. A Court of Appeals contemplating what to do with an appellant who took neither approach could reasonably

deny procedural indulgence, not least of all when the appellant was in the Court of Appeals because his approach to litigation in the District Court was so far short of acceptable that he had suffered the sanction of dismissal. Demands by the most burdensome and unreasonable of litigants that they receive a more forgiving standard of compliance than the rules prescribe are not matters deserving this Court's time.

CONCLUSION AND PRAYER

Respondent Muriel Flake therefore prays that the Petition for Writ of Certiorari be denied for failure to present any indication that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Respectfully submitted,

HIRSCH, GLOVER, ROBINSON
& SHEINESS

By: _____

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917 Franklin at Main

Attorneys for Respondent
Muriel Flake

APPENDIX A

United States District Court
Southern District of Texas
Entered
May 25, 1990
Jesse E. Clark, Clerk
By Deputy:
Signature Illegible

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-85-3676

DAN M. LINKOUS

v.

HONORABLE THOMAS J. STOVALL, JR., ET AL.

ORDER

Pending before the Court is Muriel Flake's motion to dismiss. Flake correctly points out that by order dated October 16, 1987 the Court granted her motion to dismiss Plaintiff's claims against her. Although the Court granted Plaintiff leave to file a second amended complaint, Flake was not named as a defendant in the second amended complaint.

By a clerical oversight, Flake's name was not removed from the docket sheet. The October 16, 1987 order however, *did* dismiss all claims against Flake. Accordingly, it is hereby

ORDERED that Flake's renewed motion to dismiss is MOOT. It is further

ORDERED that the Clerk shall note upon the docket sheet that all claims against Flake were dismissed as of October 16, 1987.

DONE in Houston, Texas, this 3rd day of July, 1989.

JAMES DeANDA
/s/ JAMES DeANDA
CHIEF JUDGE
UNITED STATES
DISTRICT COURT

United States District Court
Southern District of Texas
Entered
July 6, 1989
Jesse E. Clark, Clerk
By Deputy:
Signature Illegible

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. H-85-3676

DAN M. LINKOUS

v.

DONN C. FULLENWEIDER, ET AL.

ORDER

Pending before the Court are Charles E. Long's motion for reimbursement of fees and expenses and for sanctions and Plaintiff Dan M. Linkous' motion for this Court to "show authority" for ruling on any motion after he filed his notice of appeal. Long seeks to recover $1,000.00 Plaintiff previously deposited in the registry of the Court according to an order entered by U.S. Magistrate Calvin Botley that was intended to provide Long with relief if his deposition was ultimately found to be a "useless inquiry" or Plaintiff's allegations were found to be "meritless." Long also seeks an additional $2,983.50 for reimbursement of his expenses incurred as a sanction against Plaintiff. Plaintiff has filed a lengthy response to Long's motion, which includes the entire transcript of Long's deposition.

This Court has already found that Plaintiff's original complaint and motion for leave to file a third amended complaint violated Fed. R. Civ. P. 11. *See* Order entered March 23, 1990. Moreover, the Court found that Plaintiff's discovery requests and objections to discovery were filed merely to harass or to cause unnecessary delay or needless increase in the cost of litigation in violation of Fed. R. Civ. P. 26(g) and 28 U.S.C. § 1927. *Id.* The Court concluded that Plaintiff's early attempt to depose forty-five witnesses during a four-week period and the record of proceedings before Magistrate Botley revealed a pattern of discovery abuse that merited sanctions. Nevertheless, after reviewing the transcript of the deposition of Charles Long, the Court cannot conclude that this particular deposition was abusive or concerned entirely with irrelevant matters.

With respect to Plaintiff's motion too "show authority," the Court simply notes that it has ruled on all pending post-judgment motions at the request of the Court of Appeals. Accordingly, it is hereby

ORDERED that Long's motion for reimbursement of fees and expenses and for sanctions is DENIED. It is further

ORDERED that Plaintiff's motion to "show authority" is DENIED.

SIGNED in Houston, Texas, this 24th day of May, 1990.

/s/ DeANDER
JAMES DeANDA,
CHIEF JUDGE
UNITED STATES
DISTRICT COURT

(6)

NO. 90-774

Supreme Court, U.S.
FILED
FEB 11 1991
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

DAN M. LINKOUS Petitioner,

versus

THOMAS J. STOVALL, ET.AL Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONER'S RESPONSE TO RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Dan M. Linkous
Petitioner Pro Se
1526 Kingwood Drive
Kingwood, Texas
77339
(713) 358-6838

ERRORS OF RESPONDENT'S REPLY

1) Respondents don't address Petitioner's five specific issues but procedurally and illogically condense them to two issues.

2) Respondents primarily address the "merit" of this case instead of the specific real issue at bar of improper appeal dismissal.

3) Respondents attempt to "explain away" the duty of the Fifth Circuit Court of Appeals to adhere to procedure "equally and strictly" while in concert wish "wide lattitudes of judicial discretion" applied rigidly to pro se petitioner inconsistent with customary and traditional policy making capricious, arbitrary, and double standard our system of justice.

4) Respondents continue to misrepresent the facts of this case even in discussing the merits as well as the real issue at bar in petitioner's writ violating all professional code of responsibitity and canons of ethics in the legal and judicial community further encouraging deceit, fraud,

misrepresentation and dishonesty as standard operating procedure to obstruct justice and obtain premeditated foregone concluded conspiratorial dismissal of meritorious lawsuit.

5) Judicial abuse and corruption can't be explained away by any argument, especially by pro se litigants.

6) Respondents fail to follow the same stringent guidelines required of petitioner in petition for writ of certiorari in their reply as to page numbering, print size, content organization, etc-, and are granted more lenient and lax extension considerations and joint filing procedure adherence than petitioner, especially a non attorney pro se petitioner from a non power broking, influential law firm.

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NO. 90-774

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

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versus

THOMAS J. STOVALL, ET.AL. Respondents,

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITIONER'S RESPONSE TO RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE U.S. SUPREME COURT:

COMES NOW, Dan M. Linkous, petitioner (plaintiff/appellant), and would show the following in opposition to respondent's reply

to petitioner's petition for writ of certiorari:

ARGUMENT FOR RESPONDENT'S ERROR #1

Although submission of documents for the U.S. Supreme Court should be concise and simplified, the specific issues of petitioner's petition for writ of certiorari are distinctly different and should be addressed individually not collectively for expedition or subterfuge not addressing specific procedural points which terminated petitioner's/respondent's appeal to the Fifth Circuit Court of Appeals. This form of intentional misrepresentation violates the professional code of responsibility and canon of ethics that citizens of this country are told the legal and judicial profession will follow even at the lowest, much less highest level of obligation, responsibility and duty to its profession and oath of office. The procedural rules before commencing an appellant's briefing schedule or before Fifth Circuit Court of Appeals can terminate an appellant's appeal for allegedly failure

to timely file appellant's brief are specific and must be equally and justly applied and not ignored for personal agendas or to discriminate against certain litigants or their case merits. A horse is a horse, a zebra is a zebra, and a horse is not a zebra; for the highest court of this land to allow the Fifth Circuit Court of Appeals to logically equate a horse with a zebra in order to justify their wide lattitude of discretion in terminating a citizen's right to appeal fostering obstruction of justice, is unconscionable. No sequential numbering of this case's file was performed; no transmission of this case file to the Fifth Circuit Court of Appeals was performed. These are essential requirements before briefing schedule and timetable for appellant's brief can be commenced. To use a rule arbitrarily to dismiss some litigants cases and to retain others, is not in the best interest of justice and allows room for personal agendas, personal animosities, discrimination, capriciousness, and ultimate

prejudice and harm to litigants making our system of justice totally untenable, incredulous, and arbitrary.

If this case's file was retained in the U.S.D.C. for ongoing litigation in this matter, especially if it commenced after the filing of the notice of appeal by appellant and petitioner, then that precludes commencement of briefing schedules for litigants until such matters are resolved and the appropriate procedure followed for handling of the record on appeal to the Fifth Circuit Court of Appeals. Respondents wish this body to turn its head from the truth and fact of this case. They refuse to address the issue that the U.S.D.C. unlawfully addressed numerous issues subsequent to the filing of the notice of appeal that were raised both prior to and after the filing of the notice of appeal in order to retain that case file in its possession. Ultimately through its ex parte illegal conspiracy with the judicial and clerical officials of the Fifth Circuit Court of Appeals, the malicious

and bad faith premeditated and foregone concluded demise of this meritorious case was effected. The U.S.D.C. obstructed discovery of petitioner, and allowed numerous improprieties to occur in the prosecution of this case such that it was forced into appeal to the Fifth Circuit Court of Appeals for hopefully appropriate adjudication on its mishandling and meritorious issues. The U.S.D.C. has "thumbed its nose" at our respect for and integrity of our most cherished and highly proud judicial institution.

The collusion of the U.S.D.C. and its clerk's office with some Fifth Circuit Court Judges and its clerk's office in combination with the powerful litigants and their power broking, influence peddling law firm counselors, makes obtaining justice by average citizens nearly impossible, and further concludes that democracy and justice in our country is illusionary and theoretical at best with essentially no practical and realistic basis in fact. Respondent's counsel

do not wish this honorable body or the Fifth Circuit Court of Appeals to review the U.S.D.C. improper handling of this case, nor does it want this body to consider the facts and truth of how this case was terminated improperly, for fear that the predetermined demise of this case might resurrect and hold those culpable in embarrassing and incriminating fashion for their conspiratorial efforts to obstruct justice at the U.S.D.C. and the appeals level.

The Fifth Circuit Court of Appeals clerk's office knows the appropriate procedure in handling the issuance of briefing schedules and what prerequisites must be met "to the letter" before it can issue a briefing schedule and start briefing timetables. It is obvious that the U.S.D.C. improperly retained this case file in its possession and never followed the appellate procedure; no agreement of parties or order of the U.S.D.C. or Fifth Circuit Court of Appeals was consummated to justify retention of these

records by the U.S.D.C. or its clerk's office. No sequential numbering or transmission of the record occurred. The correspondence between the Fifth Circuit and the U.S.D.C. witnesses the obvious demand for and refusal to submit such records until "it was decided" for the case manager to start the briefing schedule improperly to the detriment of appellant and petitioner. This is not a "small variance" from the procedural norm, nor can it be couched in euphemistic terms or minimized in its import as the spirit of our laws is such that they be followed equally and properly so that no litigant arbitrarily, and for ulterior motives, is foreclosed from the court system or its appellate process to address ill perpetrated upon that litigant. The intentional mishandling by the U.S.D.C. and clerk's office and the Fifth Circuit Court and clerk's office was to "sweep under the rug" the most egregiously heinous conspiracy wherein justice is denied by procedural, technical, and administrative "variances" in disguising

them under "wide lattitudes of discretion" of our judges and clerks. The purpose of our U.S. Supreme Court review is to assure that these wrongs are not tacitly approved of or openly encouraged by apathy, intentional neglect, or blatant discrimination against certain litigants and their cases for revealing these improprieties.

This case has not been a failure of the litigant to prosecute but represents a meritorious case obstructed its discovery by "hook and crook" and blatant disregard by certain litigants and their power broking counsel for our basic fundamental tenants of our system of justice. The U.S.D.C. judges who are sponsored and/or affiliated in some capacity with these power broker, influence peddler law firms and attorneys, cannot be allowed to sell out the integrity of our heritage of our system of justice. We should dismantle our bill of rights on its December 15, 1991, 200th birthday, and its constitutional ammendments and retitle our federal procedure "periodic guidelines

possibly used by judges if they so desire in their decision making process on litigants and their case's worth or value". The reason petitioner payed for and requested a jury trial in this matter was to obviate exactly what has transpired procedurally and technically to terminate this very meritorious case.

It is easy for respondents and their counsel to misrepresent and deceitfully, dishonestly, and fraudently make comments about documents in this file, as they know they can without accountability, and with total impunity, obstruct the transmission of this case's documents to "any" review body by the mechanisms utilized in this case. Even respondent's counsel reiterated the complexity and copious nature of this case's file as a rationale for their extention to file their respondent's reply. Petitioner contended it is for this very reason he should have been provided, or given access to, the entire case file in order to properly and completely prepare his appellant's brief

for submission to the Fifth Circuit Court of Appeals; the respondents refuted this at the Fifth Circuit Court of Appeals level, and also in this reply to petitioner's petition for writ of certiorari. Petitioner contends that the "gamesmanship" of using the same argument essentially to support one party's side, and to destroy another party's side of an argument belies the spirit of the law and the real intent and purpose of our judicial system in rendering what's in the best interest of justice, not engaging in moot court debate, logic class excercises, or machiavellian tactics to prevail at any cost.

ARGUMENT OF RESPONDENT ERROR #2,#3,#4

The best "obstruction of justice" plan is the conspiracy/collusion of litigants with judges and clerk's office personnel to violate the fundamental rights and liberties of litigants by making the case file complex and voluminous and involving many participants and precluding access to case file for appellate review after

wrongful termination. Even in Pennzoil v. Texaco, the voluminous contents of this complex case required additional time, herculean efforts, and astronomical expense to organize, copy and edify the file in preparation for appellate review to address alleged trial court points of error. Because petitioner is pro se, he is absolutely discriminated against by the legal and judicial community and the business and commercial interests they serve. His financial resources makes petitioner not a true pauper but relatively a pauper in his ability to address the issues of providing the entire record in making the best arguments, especially when he can't even get the sequentially numbered file transmitted to the court of appeals, or have them adhere to the procedure he is so rigidly and structurely told he must adhere to in prosecuting his case. In an attorney vs. "pro se" battle of "who shot John?" adjudicated by judges who are attorneys, the burden is more than onerous from its

inception. The obvious "conflict of interest" is apparent to all citizens of this country. Pro se litigants aren't asking for lenient treatment but do not wish to be discriminated against and have more harsh, strigent, prejudicial applications of rules and/or customs and traditions applied to them to foreclose their access to the courts and right to redress ills perpetrated upon them and their property and family with some equal application and enforcement and substantive due process.

Respondent attorney Taylor addresses the "merit" issues of this case instead of the issue of improper dismissal of petitioner and appellant's appeal by the improper handling of this case's file and the disregard for the procedure before starting appellant's timetable. The attempt by attorney Taylor through misrepresented fact and legal issues of this case's merit, is a very blatant and direct attempt to prejudice and bias this honorable review body, by his "catch phrases", and allusions to aspects of this lawsuit,

which he knows is distasteful to another attorney or judge, which has nothing to do with the essence of the petition for writ of certiorari issue at bar. This blatant professional code of responsibility and canon of ethic violation is standard operating procedure in "pandering to the purient interests" of judges by pushing their "trigger buttons" in mentioning certain embellished aspects of the facts of the case, along with the argument of the specific issue at bar. This is tantamount to illegal ex parte, and hopefully this honorable ultimate review body will not lend dignity to the tactic, or credibility to its misrepresented facts.

Attorney Taylor is counting on so biasing the review judges in this case that they will dismiss the petition for writ of certiorari, even though well founded, predicated on the distasteful task of possibly resurrecting a law suit which will not only be embarrassing but incriminating to their cohorts and fraternal cronies of the power broking and influence peddling legal and

judicial system which petitioner complains of and wishes justly and fairly addressed by this body.

Attorney Taylor states the court of appeals had adequate "alternative" grounds for dismissal of petitioner and appellant's appeal as it lacked merit; how would the court of appeals know if this case lacked merit or not as it made its decision without any record and without brief of parties? There was no dismissal of this case on its merit at the Fifth Circuit Court of Appeals but it was done by single judge with a definite "conflict of interest" and direct ties to the defendants and defendant's attorneys and law firms. Just as the trial court obstructed the discovery process to justify dismissing this meritorious case in the U.S.D.C., it refused to transmit the more than ample file documentation to the Fifth Circuit Court of Appeals so it could ascertain for itself whether this case lacked merit as "alternative" grounds for dismissal.

Attorney Taylor's assertion that the

petition for writ of certiorari should be denied because of lack of merit of petitioner's unlying claims, has nothing to do with the heart of the issue at bar; petitioner would relish the opportunity to have time and complete file access to adequately brief the merits of this case at the Fifth Circuit Court of Appeals or with the U.S. Supreme Court so that one of those two bodies could adequately determine if there is "complete lack of merit" as additional rationale for dismissal of this case. The misrepresentations by defendants and their counsel at the trial court level, is only surpassed by its fraudulent, deceitful, and dishonest misrepresentation at the Fifth Circuit Court of Appeals and in its reply to petitioner's writ of certiorari filed with the U.S. Supreme Court. How would anyone know whether this case is meritorious or not because it has been entirely misrepresented and obstructed from having its facts available for a review body to determine its merits? The whole purpose

of petitioner wishing a review of this case by the Fifth Circuit of Appeals and U.S. Supreme Court was to have the facts of this case under scrutiny for evaluation of its merit besides the legal arguments as to the properness of its handling at the U.S D.C. and Fifth Circuit Court of Appeals. This has been totally obstructed and denied petitioner and is one of the rationale for the request for granting petition for writ of certiorari so that this can be properly addressed for the best interest of justice.

Attorney Taylor's stating this appeal is only one of many lawsuits filed by petitioner against his former wife, is blatantly false and has no bearing, even if it was truthful, on this particular case. Attorney Taylor so relies on extraneous, irrelevant, biasing and prejudicing comments to influence a judge from being an interpreter of law and a trier of facts that he is unable to follow rules and principles as an attorney that pro se litigants are so brow beaten and down trodden about adhering to the legal

and judicial system. The numerous comments by attorney Taylor about alleged other lawsuits have no applicability to this case, and are totally misrepresented and exaggerated. The lack of integrity, moral fiber, conscionability, and ethics of attorney Taylor hopefully will not be rewarded by this court and certainly hopefully not encouraged as good "lawyering tactics". The attempt to create the allusion that this case was simply frivolous, vexatious, and harassing, is hammered home to prejudice this honorable body; petitioner contends that if any court had an opportunity to evaluate the facts evidenced in this case to date that attorney Taylor and others would be found to be blatant prevaricators to this honorable body. I personally take afront that our great United States Supreme Court institution can be lied to by attorneys from powerful influential law firms with impunity as it detracts from its honorability and signals the community that this great body can be disrespected by those of "certain

position" against others who seek justice but are not of such preferentially treated position. Attorney Taylor continues with a long laundry list of misrepresented aspects of this case which he cannot substantiate by his appendix and fails to "tell the whole truth" in the related matters which can only be understood by review of the complete record.

Attorney Taylor fails to inform this body that discovery depositions were halted on three occasions by court orders and on three other occasions by filing of numerous protective orders and hearings that "stalled discovery and progression of this case" for almost four years. By the time petitioner had opportunity to do discovery numerous deponents refused to appear and on motions to compel and sanction, the U.S.D.C. refused to force their deposition before discovery cut off. The most blatant mockery of our judicial system is the U.S.D.C's refusal to make the primary defendant in this lawsuit, attorney Donn Fullenweider (power broker

president of the marital attorneys of the United States), be compelled or sanctioned for failing to appear at a scheduled deposition on three occasions. The continued instilling of emotional baggage and collateral attack by mentioning the "divorce" of this case with its incumbent political and public opinion aspect deters from the appropriate administration of justice. Attorney Taylor fails to state that attorney Junnell (son of Judge Junnell of the Harris County, 14th Court of Appeals, who participated in many of the state court decisions culminating in this lawsuit) is from Andrews & Kurth lawfirm, where Edith Jones at the Fifth Circuit Court of Appeals has great power and may be the next U.S. Supreme Court Justice. The fact that another attorney was appointed to represent defendant Nancy Linkous (even though she did not have to prove her pauper status or file a sworn C.J.A. affidavit) only to be replaced by the presiding judge as he was a "solo practitioner" and had no "clout with the

higher judiciary" is unconscionable. The blatant illegal ex parte meeting between defendant's counsel and the presiding judge with written correspondence to petitioner's then counsel indicating that quashing of depositions resulted from that illegal ex parte meeting halted discovery again for approximately three weeks prior to trial; later petitioner learned that this illegal collusion humorously attested to by the presiding judge and Fulbright & Jaworski lawfirm, indicates their perception of unaccountability at the higher courts. The list of improprieties not related by attorney Taylor, and the blatant misrepresentation of the facts should not be condoned and is another reason why the petition for writ of certiorari should be granted. The blatant wire tapping, mail interception, and use of interstate banking transaction by the defendants in their racketeering capacity has not been addressed by attorney Taylor. To date petitioner still has not been allowed to see his children for over three years

because of defendant Nancy Linkous' belief that she "is above the law" as long as she is affiliated with her power broker influence peddler attorneys and co-defendants in this case. This sends a very wrong message to our society. The state courts have totally abdicated from involving themselves in petitioner's matter and whether petitioner had two children or ten children, he should be allowed a forum to address his civil rights violation in regards to his denial of access to state court relief for this civil rights violations. Our family units are allowed to be destroyed with its encumbent devastation by apathy and negligence of our state federal judiciary.

Attorney Taylor continues to mention the records at the Fifth Circuit Court of Appeals which never were transferred there; there is no substantiation to these misrepresented comments in his "statement of facts" in his appendix and they represent more of his exaggeration, embelishment, and misrepresentation, which he hopes this court

will believe because petitioner is pro se and no record is available as attorney Chandler (McKinnley) emphasizes as a point of his argument against granting the writ.

The continued citing of cases, much like "filler" concerning the merits of this case and the rationale for the wide lattitude of discretion of courts to dismiss cases "for whatever reason" regardless of how arbitrary, capricious, and improper cannot be applied until the record is transferred and examined to determine if merit exists as a collateral element for dismissal. Petitioner contends that the "gamesmanship" of supplying appropriate number of cases to back any position one takes has over shadowed the basic premise that the statements made by the relator be true and factual and not false and misrepresented. Attorney Taylor misrepresents petitioner's request for the entire record to be filed in the court of appeals as the request was for the entire "designated transcript" to be filed and not a partial transcript or a piece of paper

which a judge says is comparable to the sequentially numbered transcript per the Federal Rules of Procedure (a horse is not a zebra even if a U.S.D.C. or Fifth Circuit Court of Appeals judge says it is). Attorney Taylor alludes to the volume and tone of motions by petitioner as another prejudicing and biasing tactic to divert one's attentions from the real facts and truth of the matter; it is blatantly apparent that the defendants and their counsel are extremely frightened and concerned about this case ever being reviewed by honorable men and women. The tactics and the degree to which this conspiracy has gone to "deep six" this lawsuit is appalling and unconscionable. This case may be dismissed by this honorable body but it certainly will not be "swept under the carpet" and will be edified by all who wish to confirm their perceptions of our judicial system and its future course as to justice for its citizens as opposed to business and commerce for its attorneys and judges.

Petitioner contends alternative grounds

for dismissal can only occur when the record is fully and completely evaluated before the decision of lack of merit is made. This was not done in this case. Attorney Taylor uses the "in the alternative" to protect his request for dismissal, and asks that the appeal be reinstated if he cannot convince by "hook or crook" this honorable body to just "trash the matter". His concern about further harassment to respondents is ludicrous and indeed if they are guilty of their accused complaints, then this honorable body should not indemnify and allow their actions to go unrecognized and unpunished or else there is no system of justice in this country, except an arbitrary, capricious, and self serving "buddy system" among the powers to be. In attorney Taylor's quoting local rule 34, it is very clear in that rule and in the prevailing case law that before a case can be discerned as having no merit, it must be adequately and completely reviewed; the Fifth Circuit Court of Appeals had no record whatsoever in its possession to review, and

strictly made its decision on its illegal ex parte, and hearsay communications with the defendants and their counsel and judges and clerks involved and not the record. This illegal and unethical violation of the trust of the people of this country should not and cannot go unchallenged.

ARGUMENT OF RESPONDENT ERROR #5

Petitioner realized the wide lattitude of discretion of the courts but if they are completely arbitrary, capricious, and fundamentally corrupt and rule strictly on what is in their best interest and the legal and judicial "system"business best interest, then the citizens of this country should revolt in protest, and demand the constitution and their fundamental rights and liberties be protected by a mechanism other than our federal appellate review system. The premise that the underlying case lacks merit is false; petitioner simply wanted an opportunity to brief the case so that the Fifth Circuit Court of Appeals would have an opportunity to determine if there was merit to this case.

It was obvious that no one wished the merits of this case revealed because the conscionability and integrity of some of the Fifth Circuit Court of Appeal's Judges might preclude them from allowing this travesty of justice to continue. They might feel compeled to rule against their attorney and some judge cohorts and cause controversy and embarrassment. Judges have become legislative policy makers, public opinion reflectors and deitous decision makers about citizens rights to family, property, livlihood, etc-Petitioner wanted an impartial trier of and interpreter of law without bias, prejudice, and discrimination. How far does the "wide lattitude of discretion" go? In this particular case the U.S.D.C. prematurely ruled on parts of this case and made sanctions which were not timely applied for by defendants and were ultimately dismissed by the Fifth Circuit Court of Appeals. This is also not mentioned by attorney Taylor. These sanctions are not used for rehabilitation, education, or abuse deterence

but are used as punishment and exclusion of "certain litigants" and their cases from our judicial system. This is common policy with pro se litigants not because of their lack of due diligent investigation, ineptitude or inexperience, ignorance of the law or even their emotional involvement in their cases but stems from the long heritage of discrimination against pro se litigants and litigants with controversial cases who have illegalities perpetrated upon them, their family, and property by corrupt attorneys and judges. No attorney will represent clients who have had the most heinous of crimes perpetrated upon them by these power broker influence peddler defendants, therefore a litigant must pursue his case pro se or else default and allow the judicial system and its subserved judges and attorneys to arbitrarily and capriciously render verdicts in litigants cases without due process, equal application and enforcement, or access to the courts. Attorney Taylor essentially states that the Fifth Circuit Court of Appeals

can do whatever it wishes in regards to litigants lawsuits. If there are no rules or guidelines or boundries, then this is true. In this particular case, they are so far afield, it is blatantly embittering to all those aware of this case of the abuse of discretion and blatant misrepresentation, fraud, deceit, and dishonesty.

Attorney Taylor includes as appendix c, the "original complaint", which was filed by petitioner when he was in bankruptcy, and without funds for counsel; this was a result of chief U.S. Bankruptcy judge stating that he was granting leave of stay to petitioner to file in "any court", "any document" he wished in order to gain access to his children which have been wrongfully kept from him. Even the U.S. Bankruptcy judge knew of the corruption involved and wanted petitioner to have access to our courts to redress these ills. The 3rd ammended complaint which was timely filed, is not included in attorney Taylor's appendix and most accurately and concisely relates the

facts and allegations in their pre trial proved basis by discovery performed, although admittedly constrained and limited intentionally by the U.S.D.C. The presiding judge's assigning five hundred dollars per deposition taken to be placed in escrow by petitioner, while petitioner was in bankruptcy and had limited funds for such, is another unconscionable obstruction of justice that attorney Taylor fails to mention in his statement of the case. The sanctioning of defendant Judge Huckabee by the Judicial Conduct Committee of Texas and the lawsuits filed against him for threatening the life of a subpoena server and falsely imprisoning another subpoena server should not be approved of by this honorable body. The blatant disrespect shown by certain deponents when they stated they will never appear for deposition, makes mockery of our discovery process and system of justice.

Petitioner wishes this honorable body to take judicial notice that attorney Brian Chandler is the counsel of record, and not

attorney Jack McKinnley; no substitution of counsel of attorney McKinnley for attorney Chandler has been appropriately made. No notice was made to petitioner by defendant Flake or her counsel, attorney Chandler, of this "last minute late" supposed change of lead counsel and its procedurally and technically and even by custom and tradition, improper. Attorney McKinnley has never participated in this case, and has no knowledge of the case, except what would be related to him by attorney Chandler or defendant Flake, or by his review of the record, which petitioner contends he has not reviewed. Certainly this court, like the Fifth Circuit Court of Appeals, can do anything it wishes and has "ultimate wide lattitude of discretion" but prevailing case law is clear that this attorney has no working knowledge of this case and has never participated in its litigation and for him to sign and file this on behalf of attorney Taylor is improper without notice to petitioner.

Attorney McKinnley cites rules of procedure regarding the handling of the record on appeal; no record excerpts or partial record was ever transmitted to the Fifth Circuit Court of Appeals and no semblance of an entire original record was ever transmitted when the Fifth Circui Court of Appeal's single judge "made its decision". Petitioner wishes this honorable body to take note of the attorney's condescendingly pejorative and personally hostile attack of petitioner, creating an unobjective milieu to evaluate the objective data of this case. Respondent's counsel continually refer to matters outside of the "appendix" submitted by them or petitioner and reference petitioner's appendix in many of their comments. Apparently attorney McKinnley accepts petitioner's appendix accuracy and condones outside of appendix statements if is serves his purposes but uses this tactic to detract from petitioner's petition for allegedly the same behavior. Petitioner contends petition for writ of certiorari

speaks for itself, and documents alluded to by petitioner are included in the appendix, either whole or excerpts and are not outside the record as attorney McKinnley misrepresents. Petitioner would like to have had the entire pertinent transcript supplied this honorable body to ascertain the facts and merits, much like he wished for the Fifth Circuit Court of Appeals but this has been impossible because of its voluminous, complex and inaccessible nature.

Petitioner takes umbrage at the unprofessional and irrelevant comments by attorney McKinnley, referring to petitioner's comments as "venting of frustrations by pro se plaintiff convinced of his unjust treatment"; this is a prejudicing, unethical, unprofessional, and "low stooping" means of attack by an attorney who obviously does not wish to address all of the issues objectively in question. Petitioner has not attacked the known personal and professional deviancies and short comings of some of the defendants and their counsel

participating in this case and feels to do so, even by inuendo would be improper as is attorney McKinnley's comments in personal attack on petitioner through direct comments and subtle inuendos.

Attorney McKinnley proceeds to "tell the tale" of the statement of the case without any substantiating documents in his appendix for many of his "out of context" irrelevant comments such as "respondent Muriel Flake ran afoul of petitioner when serving as court appointed psychologist in his divorce"; this is blatantly false and no document exists to prove such. Attorney McKinnley insults the intelligence of petitioner and disrespects this court by behaving in what he previously condemned petitioner allegedly for doing in his petition. Is there no end to the blatant high handed arrogance of some power broker law firm attorneys and their misrepresentation, fraud, deceit, and dishonesty?

In attorney McKinnly's summary of argument, again numerous statements about

the facts and occurrences in this case are made without substantiation, and are totally misrepresented and taken out of context. He states that certain statements are well supported by the pleadings and applicable standards, and yet he can't support with documents in the appendix, many of these allegations. Petitioner realizes the complex voluminous nature of this case makes it difficult to present an adequate appendix, and would like to have had more time himself to prepare a complete appendix for this honorable body but was restrained by time and finances which the defendant's counsel cannot complain of nor did he take advantage of. In the summary of the argument attorney Taylor refuses to address the issue of the "complete record" being sequentially numbered and transferred to the Fifth Circuit Court of Appeals, and whether he has knowledge of exactly what was sent, if anything, to the Fifth Circuit Court of Appeals by due diligent investigation before he comments on such in this reply. "Shooting from the

hip" seems to be standard operating procedure by powerful lawyers, especially against lowly pro se litigants, who have been beaten up on and down trodden, only to be adjudicated by a judge who is also an attorney.

Attorney McKinnley attempts to absolve the Fifth Circuit Court of Appeals from responsibility by stating that it "tried to obtain the record from the U.S.D.C. without success"; one can imagine the difficulty that pro se petitioner has had in obtaining discovery, the record on appeal, or just consideration of his request for extension of time to file his appellant's brief. Attorney McKinnley wishes this honorable body to believe that an unsubstantiated clerk to clerk letter from the U.S.D.C. to the Fifth Circuit Court without agreement of parties or judicial order, is sufficient to consist of a "sequentially numbered complete transcript of record"; attorney McKinnley wishes this honorable body to state that a horse can be a zebra when it's in the "big law firm

attorneys" best interest but that a horse is definitely a horse when it applies to pro se litigants. Attorney McKinnley alludes to the documents "provided by petitioner" in regards to the district clerk's actions concerning the record but has no direct knowledge of such; attorney McKinnley states "it is obvious that the district court ordered, and the court of appeals approved, keeping the record in district court on appeal"; there is no proof to this and is simply an inference made by attorney McKinnley without proof and diametrically opposed to the great weight and preponderance of the evidence allowed to be presented to date. This is a futile attempt to justify dismissal of this case, although a dishonest, deceitful, fraudulent, and misrepresented basis for such. Attorney McKinnley does not supply the "entire index or file" or even documents he refers to for this court's edification but makes criticisms of petitioner's failure to do so. Petitioner hopes this sophomoric and banal tactic will not influence the

honorable U.S. Supreme Court as attorney McKinnley apparently feels he can bamboozle petitioner pro se litigant Linkous with. Attorney McKinnley fails to apprise this honorable body of all of the motions considered filed before and after the notice of appeal was filed, supposedly justifying the retention of the record at the U.S.D.C. This "not telling the whole truth" is common place and arbitrarily applied for punitive reasons on particular litigants. Attorney McKinnley resorts to the "failure to have access to the record" as the primary grounds for the Fifth Circuit Court of Appeals decision; this is only one small part of the entire improper procedural handling of the record which justifies the extension of time, and therefore granting of the petition for writ of certiorari for petitioner. Attorney McKinnley states that the "content of the record was well within his grasp"; he again makes a statement about something he knows nothing of and has no proof of. The evidence is against this.

Is an attorney held to a different standard than a pro se litigant when before any judge who is an attorney? Can continued misrepresentations, unsubstantiated allegations, and blatant prevarications be justified and tolerated simply because the reviewer and trier of law is an attorney first, and a judge second?

Attorney McKinnley fails to apprise this body that the file of this case was "lost" even to the distict clerk's office for months and was eventually found in an office of a law clerk no longer working with the presiding judge of this case's court. If to prevail at any cost, including failure to tell the whole truth and misrepresentation and deceit, is all that this honorable body is concerned with then the citizens of this country should have a more realistic appraisal of what to expect from there judicial system if this is tolerated. Again attorney Taylor makes comments about attacks made by petitioner on persons and institutions as a "personal attack" against petitioner; this

is an adversarial lawsuit and involves numerous civilly [illegible]al and criminal behaviors by individuals charged with the highest responsibility and obligation to not violate this trust and obligation. Petitioner is rightfully aggravated and disgusted with the defendants and their counsel, not only for their acts delineated in the "original complaint" and its ammended forms but in their tampering with the procedural integrity of our appellate process by corrupt means to deny access to courts and obstruct justice by not having petitioner's lawsuit adjudicated on its merits. Petitioner has not "ignored his obligation to file his brief" but does demand that the same standard be applied to the defendants and their counsel, and their "friends of the court" and clerk's office as is applied to him in attempting to procedurally, technically, and administratively keep his case alive so it can be adjudged on its merits and not on misrepresentation, tampering with evidence,

and obstruction to discovery and justice. Attorney McKinnley fails to apprise this body "for completeness" of the numerous leniencies granted by the presiding U.S.D.C. over this matter to many of the defendants and their counsel repeatedly but denied petitioner in his prosecution of this lawsuit. This double standard creates not only arbitrariness and capriciousness but great cynicism in our average citizens. This condoning of corruption will only hasten the self destruction of a self serving greedy, double standard big business of our legal and judicial system if some sense of decency is not instilled into it. Although defendants fail to timely file requests for sanctions against petitioner, and the Fifth Circuit Court of Appeals denied their sanctions predicated on this, the U.S.D.C. judge some months later approved those sanctions over the previous ruling of the Fifth Circuit Court of Appeals, creating a quandry which even the defendant's counsel in this case does not wish to address. Attorney McKinnley

continues in his "alternative" approach that even if procedure was violated, petitioner failed to seek extension of briefing deadline timely; this is blatantly false. Petitioner timely filed his request for extension and was told by the case manager and the assistant deputy clerk that it was "standard operating procedure" to grant a "first time extension" to nearly all those that request it. Petitioner contends that certainly he can be the only one denied this and discriminated against in this regard but the preponderance is in favor of granting an extension as long as timely filed and in many instances reasonable extensions are granted to litigants, even "untimely" filed. The purpose is for the best interest of justice not for "clearing the docket" and getting rid of incriminating and embarrassing lawsuits. The imposition of falsely arrived at deadlines to petitioner is in diametric opposition to the treatment to defendants and their counsel in numerous deadlines allowed extensions by the U.S.D.C. in this case.

Certainly no litigant, even with the best of attorneys would have a chance in this system if the only purpose of those "in power" is to make sure the case is dismissed at all cost. Petitioner attests to and admits that he will always lose in regards to the statement that if everyone wants a particular lawsuit to go away, it can be made to go away whether it is proper, just, or moral, just as if some individuals can probably get away with robbing, raping, and killing other individuals because of their position in life. Petitioner's obligation is to fulfill his responsibility to see that wrong is not allowed to go unchallenged or unpunished but cannot control the actions of those in responsibility, trust, and obligation to bring justice to our citizenry. If the judges in our courts wish litigations to be decided a certain way, then no litigant has any opportunity to have justice delivered him. If one or a few individuals are denied justice then our whole country is in anarchy without democracy. Petitioner contends that

labeling this suit as groundless and vexatious and assessing abusive sanctions for is bad faith deprivation of access to courts and represents invidious discriminatory animus and brutalization of certain litigants won't forestall their courage and forthrightness, nor suppress their integrity, morality, and conscionability, which this country and its judicial system was founded on. Misrepresentations, deceit, fraud, and dishonesty is standard operating procedure by attorneys in their desire to prevail; it is the obligation of our highest charged judiciary to protect the citizen's rights and not defer such becoming part of the problem instead of part of the solution. Petition or any honest concerned citizen will never be afforded "justice" in this country. No argument can be made by the frustrated and demoralized litigant who is discriminated against by attorneys and judges for being forced to represent himself (not for ego and emotions but out of necessity) pro se in a matter he feels so strongly about,

spends great time, effort, and resources in addressing, and is obstructed by the numerous technical, procedural and administrative options open to the collusion of judges and attorneys and their clerical subservients to terminate, prematurely, litigation before it can either be fully discovered and made record of, or before it can be fully adjudicated on its merits. Few cases or treatises are published on pro se discrimination and legal or judicial terrorism and tyranny against average citizens. Petitioner, after a complicated divorce and a draining bankruptcy, while still in bankruptcy, was forced to address this issue with what small reserves remaining; his attorney represented him until funds were exhausted and the threat and intimidation to his legal counsel in continuing representing petitioner forced him to abdicate. The only advice is to sue one's representative attorney, and not to proceed with one's meritorious case unless one is ready to be discriminated against by the

cliche of criticisms of attorneys and judges to pro se litigants. How can a litigant argue lies and misrepresentations by attorneys and intentional clerical and judicial fraud, deception, and corruption that ultimately results in the demise of his litigation? Judicial and lawyer fraud has natural offspring of official corruption and extortion, and has become epidemic in our judicial branch. In "The Best Defense", professor Allen Dershowitz states of the "elite" legal system, corruption and hypocrisy of top level judges that

> "one working title for his book was Black Robes, White Lies"; "that would have been appropriate because lying, destortion, and other intellectual dishonesty are endemic among judges. In my twenty years of experience in the practice of law,I have been more disappointed by judges than by any other participants in the criminal justice system."

His book states "how pervasive judicial

dishonesty has become"; he ponders "why judges are permitted to get away with, and indeed are often praised for this kind of intellectual dishonesty, is an important and largely unanswered question confronting the American legal system". He claims that students are "constantly exposed to the temptation to cheat elite" by "observing the respected judge who falsely claimed to have read a transcript". "Cheat elite is the most insidious form of corruption in the American legal system today because nobody tells those who practice it that they are as corrupt as those who take bribes".

The "cheat elite", judicial fraud, obstruction of justice, deprivation of access to the courts or due process, unfair tribunal, invidiously discriminatory animus, or whatever the label, this putrid process confronts the Supreme Court who are voluntarily sworn before God and the people to oversee and administer this honest and moral anchor of our nation. A lonely legal ethicist, professor Monroe Friedman, presented his

study of "frivolous and vexatious" judicial opinions to the judicial conference of the federal circuit; he says

"Frankly, I have had more than enough of judicial opinions that bear no relationship whatsoever to the case that have been filed and argued before the judges. I am talking judicial opinions that falsify the facts of the cases that have been argued,judicial opinions that make the disingenuous use or omission of material authorities, judicial opinions that cover up these things with no publication and no citation rules". Certainly increasing judicial salaries and providing for more judges was not the answer for Lord Chancellor Cokes' counselor Francis Bacon whose corruption nearly four hundred years ago is legend as compared to the austerity of honorable Sir Thomas Moore, his earlier predecessor.

Professor Anthony D'Amato addressed judicial fraud as diabolically evil in "The

Ultimate Injustice; When a Court Misstates The Facts"; he states

"If we take the most elementary interpretation of the last term justice... we must acknowledge that justice, in any situation, depends upon a full and fair accounting of the facts of that situation. If, instead of facts, fictions are introduced that are contrary to the facts, then any claimed just solution based on such fictions cannot achieve justice in the real world. The proposition is so elementary that it usually goes without saying."

Certainly the U.S. Supreme Court addressed the disastrous course of judicial and lawyer fraud and extortion represented by "Peel v. Attorney Reg. and Disciplinary Comm.". This 1990 case addressing potentially misleading and deceptive practice of attorney advertising touches the very tip of the larger

iceberg of our legal and judicial system's problems. Professor D'Amato stated "we should ask ourselves what kind of judiciary system this society has produced where judges can misstate the facts of a case, and then proceed to apply the law to those fictitious facts". Can any person be safe in court if this practice is allowed to continue? If judges can listen to the evidence and then tell a contrary story, what remains of justice? The vaunted security we have in our free country and a just legal system turns to quick sand. Our case may be factually proven, legally required, and morally compelled, but we can still lose if the judge changes the facts. And if we complain...no matter how loudly... higher courts will not be interested in reviewing a "factual controversy, and the legal community, as well as the duped general public, will assume that the facts were those stated by the judge." He further states that "I suggest that practicing attorneys be asked whether they have had cases where the judge's

statement of facts were false. Every practicing attorney to whom I have asked this question has responded in the affirmative; some have told me that the practice is unfortunately quite common, and that judicial misrepresentation of facts of cases has produced a crisis in their professional lives. They feel that their work is subject to the whim of judges who play God with the facts of the case, changing them to make the case come out the way the judge desires. Some say that if they had known that the practice of law would be like this, they would have gone into a different profession." He continues in regards to students of law to state "when a student is asked to make a legal argument on behalf of a party who according to the given facts, should clearly lose, professors will not except a student who says that the party should simply lose. Instead they encourage students to come up with any arguments, however contrived, on behalf of the party who should lose. We encourage glibness,

we penalize honesty, we applaud fabrication, we discourage sensitivity of justice. We tell our students that it not the attorneys job to make a judgement about right and wrong but rather to represent the client, irrespective of right or wrong. That training which we take pleasure inmparting in our classes, has its effect upon those one or two students sitting in a classroom who will someday become judges. They too can become cynical by our pervasively amoral, technicratic approach to the legal solutions. The notion that a lawyer has an obligation to defend a client, whether the client is right or wrong, tends over time to devastate the lawyer's own sense of morality."

When judges and attorneys state they do not discriminate against pro se litigants or do not deal with them on a more critical and hostile basis, they usually are lying. The obligation of our most highest judicial authorities is to set an example to preclude this wrongful behavior. It is not in the best interest of the big business and commerce

of the legal and judicial system but it is the only interest that the citizens of this country have imparted such authority and entrusted such responsibility into these high judicial officials to ensure for the citizens of this country. In Reed v. Terrell, Gleason v. Huckabee, Hale v. Harney, Krempp v. Dobbs, Beaupre v. Beaupre,Linkous v. Johnson, Linkous v. Linkous, Gleason v. Stewart, Gleason v. DeAnda, Hamilton & Gleason v. Robertson, Hamilton, Gleason, Linkous, v. Stovall, Brinnkman v. Johnston, Brinnkman v. Dallas Co. Dep. Sheriff Abner, etc- are examples of case where pro se litigants or their threatened and intimidated solo practice attorneys have facts of their case misrepresented, and are procedurally, technically, and administratively improperly handled and ultimately have their case dismissed and are sanctioned excessively as a means of "setting an example and sending a signal to the community" for punishment and retaliation for requesting justice in the revelation of truth, as opposed to "taking

what the system wants to give them" in being content with blatant wrong injustice, immorality, illegality, and corruption. In Chipps v. Middle Pa. U.S.D.C. Neeland and 3rd Circuit Court Seitz,, Gagliardi v. Mcwilliams, and In re: Oliver the issue of lattitudes of sanctions even in the more easily attacked cases is addressed as is the most easily attacked case Daniels v. Stovall. In the Hale v. Harney (used to foreclose most pro se litigants at the Fifth Circuit) or Beaupre v. Beaupre, Linkous v. Klevenhagen, and Linkous v. Henderson, plaintiffs obtained counsel, paid counsel, and expected competent, comparable diligent advocacy only to have their attorneys abandon their cases after threats, intimidation and jointly and severally liablous sanctions were imposed to hopefully prevent such future actions revealing the embarrassments and incriminations of the attorneys and judges who were fraudulent, deceitful, misrepresentative, and dishonest. Certainly, in Dennis v. Sparks, the wrongful application of an injunction

upon a residence for six years with incumbent damages was addressed and stands as one of the lone Fifth Circuit Court of Appeal's cases where judicial abuse intolerance has ever prevailed even to the limited degree it did. In petitioner's case the fundamentally unconstitutional judge-lawyer dishonesty, fraud, deceit, misrepresentation, and obstruction of plain simple indisputable truth is reechoed by the "catch phrases" that attorney Taylor and McKinnley bring up in their reply in hopes of signaling this honorable Supreme Court that it's time to "dump another case" for the system. I hope this honorable body will not stoop to such a low level and allow these despicable players to prevail which causes greater loss to to our system of justice and decency then to petitioner. These individuals should not be allowed to deceive this court and its heritage and institution in which the citizens of this country entrust their lives, property and futures.

ARGUMENT TO RESPONDENT'S ERROR #6

Attorney Taylor has ii page marked without any content. His reply does not address the specific issue of procedural mishandling of petitioner's appeal for the purpose of petition for writ of certiorari. Attorney Taylor includes Thomas Henderson and Nancy Linkous as additional respondents, joining in his reply as joint response to petition for writ of certiorari but their is no documents in the appendix or signatures on this or other documents by those respondents or their counsel to verify this. It becomes hearsay and unsubstantiated at best. If counsel for Nancy Linkous and Thomas Henderson have collaborated with attorney Taylor in this response then they should verify such, and be responsible as to sanctionability and/or perjury, or false verification and/or certification of such document which they have not. On page 17, attorney Taylor under "prayer for relief" includes two lines which leave the rest of the page empty and carry over to page 18

to finish. On page 18 there is a certificate of service which is not supposed to be included in the reply document. These are some of many that petitioner and other pro se petitioners have been criticized for and strigently held to adhere to or else have their pleadings stricken regardless of their content. Apparently these same rigid and strigent rules don't apply to attorneys as they do pro se litigants. In attorney McKinnley's reply there is no substitution of counsel for attorney Chandler, who was the only attorney of record throughout all of the proceedings of this case, and therefore attorney McKinnley having no knowledge of any of the proceedings and having never participated in any of the proceedings, cannot file this reply document with any certainty or any due diligent investigation, much less verification as to genuineness of fact. The reply of attorney McKinnley has print size inconsistent with the rules, especially in the table of contents and table of authorities. Attorney McKinnley includes

on page 1, more than the questions presented for review, including more rhetoric and misrepresentation, apparently not to be substantiated by his appendix or any cited documents in this case. Attorney McKinnley copies, as part of his appendix, documents which he states signatures are illegible, and makes other alterations and/or deletions in these critical documents without having apparently due diligently researched and checked these documents before including them in his appendix. This shabby lack luster and cavalier approach to this case permeates the case from its inception to date by defendants and their counsel. The extension of time for attorney Taylor and then ultimately attorney Chandler (not attorney McKinnley) has been granted by this U.S. Supreme Court Clerk's Office and judicial body over objection of petitioner. The extension of time far exceeds any extension requested by petitioner in order to file his original petition for writ of certiorari. Petitioner is uncertain whether the extension

of time includes Nancy Linkous and Thomas Henderson and their counsel or not, as the procedural propriety in their inclusion parenthetically by attorney Taylor in his reply is unsubstantiated to begin with. Petitioner realizes that this honorable body and its clerk's office can dismiss this petition for writ of certiorari without even having looked at it or read it, as many of the pro se litigants have been treated in the heretofore mentioned cases, and will presumably be in other similar cases in the future. Petitioner contends this blatant unequal application and enforcement and obvious invidiously, discriminatory animus (Yic Wo v. Hopkins) toward pro se litigants harms the legal and judicial system deeply.

CONCLUSION AND PRAYER FOR RELIEF

For the reasons and arguments set forth heretofore by petitioner to respondent's counsel's reply to petitioner's petition for writ of certiorari, petitioner requests that this honorable body deny the dismissal of his petition for writ of ceriorari and

grant his petition for writ of ceritiorari to the Fifth Circuit Court of Appeals. Petitioner prays that this case will be granted petition for writ for certiorari so that it can have opportunity to be briefed by petitioner as appellant so that it can conceivably, however honestly or dishonestly be reviewed and addressed by the Fifth Circuit Court of Appeals Panel, who failed to look at any of the merits of this case in its premature dismissal to begin with. Petitioner prays that this honorable body sanction the defendants and their counsel for all the misrepresentations, deceit, fraud, and dishonesty utilized by them to prevail in overturning petitioner's petition for writ of certiorari to the Fifth Circuit Court of Appeals.

Respectfully submitted,

Dan M. Linkous.

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February 3, 1991